

## President's Message

Well it's official. CCI Huronia is on fire. As the *Condominium Act* undertakes material changes over the next several months with the implementation of regulations, the implementation of Condominium Management Regulatory Authority of Ontario, CCI Huronia is doing its best to keep you up to date and posted with all new changes.

In addition, we are continuing with our ongoing education courses and adding a few new in depth ones this year to take you even further.

What we have noted is that there has been a dramatic increase in the number of condos in the Huronia area but there has also been a significant increase in the desire for people to have knowledge to understand more and more about the place that they own, that they live in, that they invest in that is probably one of their biggest investments. We are pleased to see that growth CCI has, as a national organization, been providing education to directors, to unit owners and all those parties that are related to the condominium industry for 35 years. It is a solid legacy that we can rely on to help educate and navigate the future. We will keep you posted with further evolution and developments about CCI itself.

On the local front, we are excited about our AGM coming up on September 9, 2017 and we would like you to make sure you book your calendars in advance. We are proud to have the Mayor of Barrie participating again. It is an exciting time with lots of change and transformation. Condominiums really need to understand how this new legislation and all the pieces and parts that come with it all fit together.

I recently had the opportunity to sit with CCI chapters from across Ontario to discuss the new proposed regulations. We put together a submission collectively from all the chapters to reflect our thoughts where these regulations could be improved. A copy of that letter is on our website at attached link [www.ccihuronia.com](http://www.ccihuronia.com). I would recommend that your board review it because it provides valuable insight into the complexities proposed by the regulations CCI feels that working with the government to help on the implementation of these changes will help our members in the long run. When we looked at it, one of the things we were concerned about is just making sure that the information was easily accessible and could be processed efficiently. This is important to condominiums in Huronia because we have condominiums that may not necessarily have the infrastructure needed to keep data and records contemplated – thus we asked the government to create more prescribed forms. CCI is looking at ways to try and help condos keep on top of their obligations while still ensuring that it is practical.

We have also been speaking with members of our board who supply services in the condominium property management area and it is fascinating to learn how proactive their companies are being in taking the information both under Bill 106 and the *Condominium Management Services Act* and integrating these new requirements into their operations. Debbie Dale of the Board of Directors of CCI Huronia is sitting on the Condominium Management Regulatory Authority of Ontario (“CMRAO”) Stakeholder Implementation Working Group for the CMRAO. I think the advisory body shows a real diverse and competent set of interests, experience and skill and I think that is a positive step by the government in effective implementation. Onward and upward!

## How to get a RFS right – mostly...

By Jon Juffs

Last year we saw more of the same. Now, following-up on last year's article of "Why Are RFS Wrong?" this article updates that information and reinforces how to get it right. It comes as no surprise that reserve fund studies are subject to numerous assumptions beyond anyone's reasonable control. One lingering assumption has been for many years and for far too many reserve fund planners that the cost of work and expenses from reserve should change at a percentage rate equal to the rate of change that the annual contributions to reserve do. The available evidence illustrates that correlation simply does not happen often enough to justify its use in, or forming the basis of, 30-year or longer cash flow plans.

In Ontario, the Condominium Act and Regulations require condominium boards to develop a plan for future funding that is sufficient for the anticipated major repair and replacement costs over a period of at least 30 years on a positive cash flow basis. Regarding the long duration, remember that even though 30 years may sound like a long time, for buildings and many of the components that make them, it really is just a fraction of its likely, and expected, service life. A positive cash flow is, essentially, the result of the opening balance plus the annual contributions and interest earnings minus the predicted expenses, every year, being greater than zero. The minimum closing balance for most corporations is no less than \$500 per unit and many corporations establish policies for even higher minimum closing balances. One very interesting policy – that may find its way into the regulations – is that the minimum closing balance in any year of a plan should be no less than say 20% of the maximum predicted expenditures in the plan.

In 1991, the Canadian Government and Bank of Canada established an objective of deliberately controlling inflation to about 2% annually and near the centre of a 1% to 3% target range. Similarly since then, and in the interest of stable, predictable, and affordable common expenses fees, of which reserve contributions make up a third to half, many Boards try to get the common expense fees to only increase at the widely reported rate of the consumer price index (CPI). The CPI is a measure used to broadly track the retail price changes of a basket of goods of approximately 600 items related to food, housing, transportation, furniture, clothing, and recreation. Most condominium professionals agree that plans for future funding that have annual contributions at rates that are in line with CPI are probably sound plans. That may even become the legal definition of an adequate reserve fund plan for future funding one day, in the context of reserve fund planning.

But, reserve funds are meant to be used for the sole purposes of paying for the anticipated major repair and replacement costs of the common elements and assets of the corporation (paying for the studies too is a valid reserve fund expense). Despite how good vegetables are, estimating the cost of performing construction work in an occupied building bears very little correlation to the changing costs of broccoli, mortgages, fuel, sofas, t-shirts, and concert tickets. What does it track closely to? Perhaps not surprisingly, construction work at occupied properties changes with the cost of building construction,

### COMPARING EPI TO CPI FOR THE PAST 25 YEARS

Up to 5 yrs ago				6 to 10 yrs ago				11 to 15 yrs ago				16 to 20 yrs ago				21 to 25 yrs ago			
Year	CPI	EPI	ρ	Year	CPI	EPI	ρ	Year	CPI	EPI	ρ	Year	CPI	EPI	ρ	Year	CPI	EPI	ρ
2016	1.8%	2.3%	#	2011	3.1%	3.7%	#	2006	1.8%	6.2%	#	2001	3.0%	4.0%	#	1996	1.6%	1.6%	#
2015	1.2%	2.0%	#	2010	2.5%	-0.1%	☹	2005	2.2%	4.9%	#	2000	2.9%	7.4%	#	1995	2.5%	3.0%	#
2014	2.4%	1.4%	☹	2009	0.4%	-2.2%	☹	2004	1.9%	6.3%	#	1999	2.0%	2.8%	#	1994	0.0%	2.6%	#
2013	1.0%	0.6%	☹	2008	2.3%	7.7%	#	2003	2.7%	3.8%	#	1998	0.9%	1.8%	#	1993	1.8%	0.7%	☹
2012	1.4%	1.9%	#	2007	1.8%	5.6%	#	2002	2.0%	2.8%	#	1997	1.8%	1.8%	#	1992	1.0%	-0.5%	☹

☹

EPI Less Than CPI

#

EPI Equal or Higher Than CPI

Sources: StatsCan and Bank of Canada websites

which we have been tracking as the expenditure price index (EPI). Those changes appear to be mostly labour related.

In the summary table, the past 25 years of CPI and EPI are listed (1992 to 2016 both inclusive). When the EPI was less than the CPI a downward pointing arrow in a cool-blue background is shown, whereas when the EPI is equal to or greater than the CPI an upward pointing arrow in a red-hot background is indicated.

Herein lies the rub of reserve fund planning: in the past 25 years the future value of money going out of reserve has changed at rates greater than inflation 19 times out of 25, over 75% of the time. It has only been less than CPI annually six times in: 1992, 1993, 2009, 2010, 2013, and 2014. All of those negative adjustments are related to periods of extreme events, including: in the early 90's combined Canadian and US recessions with long recoveries, in 2009/10 the US sub-prime mortgage fiasco and its fallout, and the 2013/14 global debt crisis.

When EPI is lower than CPI, it averages about 0.5% compared to CPI in those same years at 1.5%; however, when EPI is equal or greater than CPI, it averages 3.8% compared to CPI in those same years at 1.9%, just shy of the deliberate inflation control target of 2.0%. Therefore, EPI is usually greater than CPI by about 2.1% or more (17 of the last 25 years), occasionally equal to CPI (only twice in the last 25 years), and sometimes less than CPI (6 out of the last 25 years, related to three extraordinary financial events). If your plan is predicated on EPI matching CPI, or construction at occupied properties being like vegetable crops, you know it will be wrong 23 out of 25 times. If it assumes, quite correctly and as past experience has shown, that EPI is roughly 2.0% greater than CPI, then you can be more confident that the expenses are more accurately projected.

Consequently, the cumulative growth of expenses from reserve will always reach a point of being greater than the balances built-up and contributions made over time. Regular updates will continue to reveal that in most cases contributions need to be increased at a rate greater-than-inflation to overcome the next updated window of expenses. The greater-than-inflation time-period should be reasonable, not so short that it causes distress in the community, and in any event not more than ten years in our opinion. That timeframe allows the completion of several tri-annual updates to either support the rationale or identify revisions needed. We also believe that it will be necessary make prolonged funding adjustments more gradually to overcome the proposed longer minimum duration cash flow tables (probably 45 years) that the new Act and Regulations in Ontario are likely to implement.

#### *About the Author*



Jon Juffs is the Director, Condominium/Strata Group, at McIntosh Perry (formerly CCI Group Inc.). His team conducts, delivers, and analyses many reserve fund studies, pre-performance audits, performance audits, failure investigations, and property condition assessments. He is a member of OACETT, OIQS, ACMO, and CCI who bestowed the ACCI designation to him in 2005. In 2006, Jon co-authored the book "Reserve Fund Essentials" a very tell-it-like-it-is resource for Owners, Managers, and Professionals involved with capital repair planning in co-owned property environments. He can be reached at [jonj@mcintoshperry.com](mailto:jonj@mcintoshperry.com),

## **New Proposed Regulations under Condominium Act, 1998 – Bill 106**

By Sonja Hodis

Since December 2015, when Bill 106 received Royal Assent and changes were made to the Condominium Act, 1998, the Ontario Government has been working on drafting the Regulations that will provide more details about the changes that occurred to the Condominium Act, 1998. The Regulations will be implemented in stages and a summary and draft of the first set of proposed Regulations has been released.

Bill 106 addressed four key areas of the current Condominium Act, 1998 that needed revision and updating. Those key areas involved i) dispute resolution, ii) consumer protection, iii) transparency and accountability with respect to condo finances and governance and iv) condo manager licensing and regulation. For more information on these areas and my top 20 specific changes that affect condo owners and directors visit my website for a copy of my article entitled “Changes to Condominium Act, 1998- Bill 106”. In this article I am going to focus on the newly released proposed Regulations the first of which are anticipated to be in effect on July 1, 2017.

In February 2017, the Ontario Government released a preliminary summary and draft of the 4 areas that the new Regulations will cover.<sup>1</sup> These proposed Regulations provide more details of exactly what new things condominium corporations, directors and owners will need to know in terms of how a condominium will operate.

According to the government’s recent release of the proposed Regulations, the four areas and some details of what can be expected in these areas are:

### **1. Communications (Anticipated to come into force July 1, 2017)**

---

<sup>1</sup> A summary and draft of the proposed Regulations can be found at this link:

<http://www.ontariocanada.com/registry/view.do?postingId=23688&language=en>

- Regular mandatory updates from condo corporations to owners on an ongoing basis by way of “information certificates”. If a corporation has fewer than 25 units or 80% of owners consent in writing to dispense with the requirement to distribute information certificates, a corporation will not be required to complete and distribute the information certificates mandated in the Regulations.
- New owners will be required to give the condo corporation their name and unit information within 30 days of becoming an owner. Owners can provide an address for service to be included in the record of owners but the address must be in Ontario and be capable of receiving prepaid mail.
- Owners can consent to receive notices electronically.

## 2. **Director Qualification and Disqualification**

(Anticipated to come into force July 1, 2017)

- Mandatory training to be completed within 6 months of being elected or appointed to the board. The cost of training is to be paid by the condominium corporation and directors can be reimbursed for any costs directly incurred to take the required courses.
- Improved transparency and new disclosure requirements for candidates running for board positions and existing directors. Failure to meet the disclosure requirements would automatically disqualify a person from being a director.

## 3. **Meetings** (Anticipated to come into force July 1, 2017)

- New notice of meeting procedures will require a preliminary notice of meeting to be sent in advance of a notice of meeting. The preliminary notice and notice of meeting will be sent in accordance with a standardized mandatory form. The preliminary notice of meeting will set out what information the owners are requested to submit to the Board in advance of the meeting and whether that information must be included in the notice of meeting.
- Quorum requirements will be lowered for certain types of meetings.
- A new mandatory proxy form will be implemented.
- Improvements to meeting and voting procedures.
- Certain types of bylaws could be passed by a majority of owners at the meeting while others will require a majority of unit owners as required under the current legislation.

## 4. **Records** (Anticipated to come into force Fall 2017)

- Clear rules regarding retention periods and access of records will be established.
- There will be two primary minimum retention periods. One will be 7 years for financial and operating records and an unlimited retention period for fundamental corporation documents.

- Proxies, ballots and recorded votes will need to be kept for 90 days from the date of meeting.
- Minimum retention periods can be extended if the corporation receives notice of actual or contemplated litigation or if the records are subject to an access request.
- Records can be kept electronically or in paper format.
- A four step process will be implemented for requests for records. A standardized form will be implemented to access records and mandatory timelines for a response will be imposed.
- Records will be classified as core and non-core. Certain records will still not be accessible.
- Requesters will not be required to tell the condominium corporation the purpose of request for access but will have to declare that their request is solely related to their interest as an owner, purchaser or mortgagee of a unit.
- The timing of release of records and costs associated with production will depend on whether they are core or non-core records and whether they are requested to be delivered electronically or by paper. The maximum photocopy charge is 20 cents per page. Fees for labour must be reasonable and can not be more than the actual costs incurred by the corporation to provide access to the record.
- The new penalty for non-disclosure by a condominium corporation of records will rise from \$500.00 to a maximum of \$5,000.00.
- Property managers or management providers under a new provision in the legislation will have a right to access corporation's records that are reasonably required and a process will be set out.

It will be interesting to see what the final version of the new Regulations will actually look like once consultations are complete and how condo governance will change in the very near future. Public consultations closed March 30, 2017.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the Condominium Act, 1998 and other legislation that affects condominiums such as the Human Rights Code. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja has also gained recognition for creativity and tenacity in ground breaking human right caselaw in the condominium industry. Sonja can be reached at (705) 737-4403, [sonja@hodislaw.com](mailto:sonja@hodislaw.com) or you can visit her website at [www.hodislaw.com](http://www.hodislaw.com) or watch her videos at [www.condoinmotion.com](http://www.condoinmotion.com).

**NOTE:** This article is provided as an information service and is a summary of current legal issues. The article is not meant as legal opinions and readers are cautioned to not act on the information provided without seeking legal advice with respect to their specific unique circumstances. Sonja Hodis, 2017, All Rights Reserved.

## Board Shorts

Two seasons: heating, cooling

This is a very personal look at the change over from winter heating to summer cooling. Our systems involve forcing either heated or chilled water through what look like car radiators. Electronically controlled fans force air across the radiator surfaces and push heated or chilled air into our condo units. Larger units may have two or three 'registers' — radiators with fans and electronics. Most of the condos have just one.

Twice a year, management schedules the switch from heat to cool, and back. This must be planned a couple of months ahead. And there lies a problem: We don't know exactly when the weather will turn.

Ahead of the spring switch, our contractor examines, checks, and maintains each of the registers. The radiators are inspected for pin-hole leaks. The drip trays are examined for standing water, debris, rust, mold etc. All defects need to be remediated ahead of the planned switch. Replacement air filters are installed.

The registers are the responsibility of the unit owner, however, as a service (and to control costs) the Board plans and implements the register service, and builds the costs into the annual budget.

The actual switch-over is a two-step procedure. One company is responsible for boilers, so on day one, they disconnect the heated water supply from the heating/cooling system, and do whatever service and maintenance is scheduled. Next day the chillers are turned on by the company that covers that service. Unit owners must switch their individual thermostats from 'heat' to 'cool'. And the operation is complete.

In the Fall, we do it all again in reverse order, but without the register maintenance. Unit owners are free to install a fresh air filter, at any time, and at their cost.

The Board, management, and our superintendents have the operations clearly delineated as to who does what. The only real decision is 'when to make the switch'. And we always get it wrong. A few hot days in May are always followed by a cold spell. And right after we turn up the heat, in the Fall, we get an Indian Summer. But the system works.

Peter Walpole