



TM

review

THE VOICE OF CONDOMINIUM

The newsletter of The Canadian Condominium Institute/Institut canadien des condominiums

National Edition Spring 2003

A Message from Your CCI National President

president's message



Sitting here among mother nature's pristine blanket of snow, I'm mindful that spring is not far away. I note the days are getting longer and the rays are getting stronger. Indoor activities and cozy fires will give way as warm spring breezes spur our restlessness. Our thoughts begin to turn to things like outdoor activities, maintenance projects and planting gardens. We begin to plan for summer. Spring is also a time to contemplate our community renewal.

For the Canadian Condominium Institute, spring brings the excitement of seeing the results of the first work of the committees struck last fall. Their new ideas and approaches keep the Institute vibrant and progressive. We know that what begins now will flourish by the fall. Our semi-annual meeting – this year in Calgary from May 22 - 24 – creates the year's first showcase for our work. Each year the Chapter who hosts this semi-annual Board meeting and educational event shares its ideas and spirit with others from across the country. We meet new people. We strengthen old friendships and create new ones. This sharing and fellowship is another part of our annual renewal as a national body.

Chapters and condominium / strata corporations are distinct communities also. Just as CCI

National does, they need to consider their annual community renewal. This is a time to say "We've just begun and look what we can do" rather than "We're half way through and almost there". What plans do you have to awaken and refresh the spirit of the people in your community? How can you encourage their creativity and enhance their positive energy for the benefit of your community? What can you do now to help the synergy of your community blossom this year? How does the community nurse new ideas and members and fertilize new ideas and energies? How will your community celebrate the arrival of spring?

Now is the time to plan – identify the unique variations in the community, the community's goals and how the community meets those goals. Involve everyone. Community renewal involves and requires the community's input. It's not too late to begin now. Spring is coming.

Please join the National Board as part of our community renewal in May. I look forward to meeting as many of you as possible in Calgary.

Deborah M. Howes, F.C.C.I.
CCI National President,
Canadian Condominium Institute

Inside this issue

2 Special Announcement

4 Chapter Chatter

7 Fidelity Bonding

10 Condo Cases across Canada

13 How to Prevent Human Rights Violations in Your Condo

15 Profile – New CCI National Director

Directory fraud—it does happen

2003 Board of Directors

Chairman

Ronald Danks, B.A., LL.B., A.C.C.I., F.C.C.I.
Simpson Wigle LLP, Hamilton, ON

President

Deborah Howes, LL.B., C.Arb., C. Med., A.C.C.I., F.C.C.I.
High Clouds Incorporated, Edmonton, AB

Vice-President

Gerrit Roosenboom, CCI (Hon's)
Barrie, ON

Treasurer

Peter K. Harris, C.A., A.C.C.I.
Braithwaite Innes Harris & Chong, Toronto, ON

Secretary

Peter Leong, P.Eng., A.C.C.I., F.C.C.I.
Cochrane Engineering Ltd., Toronto, ON

BOARD OF DIRECTORS

Mary Barber-Villeneuve, B.A., CCI (Hon's)
Gloucester, ON

Jamie A. Bleay, LL.B.

Access Law Group, Vancouver, BC

Patrick I. Cassidy, Q.C., LL.B., M.T.S., A.C.C.I., F.C.C.I.

Cassidy, Nearing, Berryman, Halifax, NS

Gina Cody, M.Eng. PH.D., P.Eng., A.C.C.I., F.C.C.I.

Construction Control, Woodbridge, ON

Patricia Ernst (Patsy)

Halifax, NS

Rob Giesbrecht, LL.B., A.C.C.I., F.C.C.I.

Pitblado Buchwald Asper, Winnipeg, MB

Joan Harrower, A.C.C.I.

KDM Management Inc., St. Albert, AB

Randy Heathcote

Nicor Property Management, Regina, SK

Lauretta Kaechele, B.A., CPM

Emerald Management & Realty Ltd., Calgary, AB

Paul Muller

Kamlodge Services Ltd., Thunder Bay, ON

Charlie L. Oliver

Martek Morgan Finch Inc., St. John's, NF

John D. Peart, B.Sc., LL.B., A.C.C.I.

Low, Murchison, Ottawa, ON

Don Peter, C.I.M., P.Mgr., CMM

Donald J. Peter & Associates Inc., London, ON

Janice Pynn, R.C.M., A.C.C.I.

Simerra Property Management Inc., Toronto, ON

Lucien Roy, FRI(E), CPM, A.C.C.I., ACM, CMOC

Estate Management Ltd., Edmonton, AB

Barry R. Scott, LL.B., A.C.C.I.

Scott, Petrie, Brander & Walters, London, ON

Chetan Thakore, B.A., B.Comm.

Suncorp Valuations Ltd., Saskatoon, SK

Andrea M. Thielk, B.A., LL.B., JD

Clarks Barristers & Solicitors, Windsor, ON

Raymond G. Wilson, RCM, A.I.H.M., A.C.C.I.

Wilson Blanchard Management Inc., Hamilton, ON

Bernie Winter, A.C.C.I.

Condominium Support Services Inc., Calgary, AB

NATIONAL EXECUTIVE DIRECTOR

Diane Gaunt

2175 Sheppard Ave. E., Ste. 310, Toronto, ON M2J 1W8

© Canadian Condominium Institute, 2001
2175 Sheppard Avenue East,
Suite 310, Toronto, ON M2J 1W8
cci.national@taylorenterprises.com

Special Announcement

for Professional Members holding the A.C.C.I. designation

In order to improve the process and enhance the reputation of the A.C.C.I. designation, CCI National set up a task force with the mandate (among other things) to make recommendations regarding renewal status, continuing education and qualifications of A.C.C.I. professionals. At its November 2002 meeting, the National Board approved the following recommendations from the task force:

a. A.C.C.I. professionals may now hold multiple designations as long as they apply for each additional designation, write the required exam, pay the application fees, receive approval from CCI, and then re-qualify for each designation held. These professionals may now also use the approved professional designation to denote the field in which they hold the A.C.C.I. designation. For example, a Realtor on their business card may be denoted as A.C.C.I. (RE); and Engineer may be denoted as A.C.C.I. (P.Eng); or a Reserve Planner who is also a Condominium Manager may be denoted as A.C.C.I. (RFSP, CM), etc.

b. A.C.C.I. professionals must now apply for renewal of their A.C.C.I. status every two (2) years commencing July 1, 2003; meaning that prior to June 30, 2005, the first renewal process must have been completed.

c. To renew the A.C.C.I. designation every two years, the A.C.C.I. professional must:

- declare that he or she has completed a minimum of 18 hours of continuing education within the two year cycle,
- pledge to abide by the CCI Code of Ethics for Professional Members, and
- be recommended by the Chapter and approved by the National Board.

d. Continuing education hours may be completed in each two year cycle through any combination of:

- Attending courses, seminars or conferences related to condominium or their profession;
- Writing articles, instructing or speaking at seminars or conferences in condominium or their related profession;
- Actively participating in their CCI Chapter or National Board or committees which involves the use of their professional skills.

Watch for further details in the May issue of CCI
Review and on the CCI National Website at
www.cci.ca

London & Area Chapter

The London and Area Chapter held its Annual General Meeting and elections on September 25, 2002. Mike Lander and Larry Holmes were returned to the Board and Kay Stallard of MCC #169 was elected for the first time. Susan Size took over as Chapter President, Mike Lander sits as Past President, Don Peter is the new Vice-President and Joan Agnew remains the Chapter's Treasurer. Jeff Phillips, Barry Scott, Connie Grant, and Heinz Gregor round out the rest of the Board. Lee Miernecki carries out the secretarial duties for the Board, as Chapter Administrator. After the AGM, a panel made up of CCI-Chapter Directors answered questions from the members on various topics including insurance, reserve funds and by-laws.

The Chapter established a Director's Club in the Fall, providing a networking opportunity for directors to meet and discuss various issues with other Chapter Board members. Lively discussions have been held on topics including: self-management vs. professional management; parking problems; insurance costs; and owners who just don't fit into the lifestyle. Mike Lander, who created the concept of

the Director's Club for the Chapter, has attended the meetings and comments: "I think it will work out well; they are an enthusiastic group."

On Tuesday, October 22, 2002, we presented "The Litigator Returns" with Toronto lawyer Mark Arnold. Mark presented information on some of the latest condo litigation before the courts to a small but enthusiastic audience of Chapter members who came out to hear the latest news. We hope Mark will come back and speak for us again soon.

The annual Condominium Directors Course was a resounding success, with 51 members participating in gaining a well-rounded education in the operating requirements for condominium corporations.

There are two more seminars scheduled for the Spring, and we will soon begin planning and budgeting for next year's events.

Lee Miernecki

Administrator, CCI-London & Area

Huronia Chapter

Winter is the time to hibernate for many species in the animal world. Certainly many humans in the Condo world migrate to southern climates and relax in the sun. But for our organization, this is the time to plan for the coming year. Our preparations, of course, focus on our educational offerings in the Spring. We have met with condo directors from Lagoon City, Nottawasaga Village, Port Carling and other communities in the Central and Northern Ontario Region to discuss course content, concerns, ideas, venues and locations that require attention. To date, we have scheduled a 5 evening course for directors and managers in Barrie during the month of April. May 10th will see us in Orillia; May 14th, in Alliston: and North Bay on the 7th of June. Other sessions are being planned for Sault Ste. Marie, Sudbury and Collingwood.

The expansion of Huronia Chapter continues to astound everyone. Our membership doubled during the first year, and has increased by another 50% during the first six months of this year. The Board of

Directors of CCI – Huronia have just appointed Debbie Dale to the Board. Debbie is President of Muskoka Condominium Consulting and Management Services, located in Huntsville. She will provide a welcome contact in the Muskoka Area and her experience in the Management and Real Estate field will expand our ability to provide knowledge in these fields. Fern Lafreniere, a Condo Director and Real Estate Agent in North Bay, is providing a valuable perspective on that city. Maj-Liisa Donaghue, a Condo Owner and Recording Secretary in Sault Ste. Marie, has been the invaluable catalyst in bringing the benefits of CCI to that city. We are looking forward to a great summer. Circle your calendar for our annual AGM and boat cruise on Barrie's Kempenfelt Bay, on Saturday, 6 September. Come join the fun.

Gerrit Roosenboom

President, CCI-Huron

Toronto and Area Chapter

CCI-Toronto is pleased to welcome two new Directors to the Board! Armand Conant, LL.B., with the firm Jones Rogers LLP, is a long time CCI-T professional member who will now be heading up the Legislative Committee as the new Chair. Bob Girard, also a long time member and President of YCC #0050, joins the Board and will sit on as a member of both the Special Projects and Education Committees.

Although it is still relatively early in the year, CCI-T's calendar of events is quickly filling up. The chapter will be participating in Springfest 2003 on Friday March 28th – where it we will sponsor a seminar on Reserve Planning with presenters, Gina Cody and John Warren. The Chapter will also have a booth in the trade show area; and we hope to see many members there. Another trade show also on the horizon is the Annual Toronto Real Estate Trade Show, taking place on Wednesday April 9th. Again, we hope to make contact there with many of our real estate members, colleagues and friends.

Early April will see the first of CCI-Toronto's Spring seminars focusing on "Enhancing Your Building". This session will bring together real estate professionals, interior designers, and landscaping experts to show residents and boards ways to increase their market value and enhance the building's image. The May seminar will focus on a multitude of issues currently facing condominium corporations including: Water Conservation programs, Recycling Issues as they relate to the City's Waste Management program, Ozone Regulations and how they will affect condominiums, as well as updates on hydro issues.

For details on these and other events; please visit the CCI-T website at www.cci-toronto.org or call the CCI-Toronto office at (416) 491-6216.

Lynn Morrovat
CCI-Toronto Administrator

News from Newfoundland

We are pleased to advise that our efforts at establishing a local Chapter here in Newfoundland are progressing very well. Following appointment of our Steering Committee, two sub-committees were struck: one to spearhead formation of our local Chapter, and one to review and amend current legislation. Both groups are working diligently to meet these goals. Our first membership drive will start in the next 7-10 days, and we are very optimistic we will reach the minimum membership requirement quickly. Our plan is to then formally establish CCI Newfoundland and Labrador, and we are all excited about the prospect.

The Legislative Sub-Committee has recently sent a memorandum to all the Condominium Boards in the Province to solicit their input on concerns that might be addressed in the new legislation. We know this will be an interesting process and are looking forward to receiving their feedback.

All of this has been made possible, and much easier, as a direct result of the wonderful support we have received from CCI National and CCI Atlantic. Your counsel and guidance has been invaluable to us and we are grateful for your continued involvement.

Windsor Essex County Chapter

In the Spring, our Chapter will be holding its Level 200 Condominium Course for a more in-depth study of condominium living. Topics will include law, financial management, property management, directors' responsibilities, insurance requirements, physical building management, reserve fund studies and effective meetings. Expert speakers from across Ontario will be presenting the course and sharing their knowledge. The cost of the course and materials for CCI members is only \$175 for all six sessions. Those who complete the course will earn a certificate. Since CCI is an approved RECO education provider, realtors can earn 12 mandatory continuing education (MCE) credits by completing the course.

For more information on how you can become a member of the CCI Windsor-Essex County Chapter or on attending the Level 200 Condominium Course, please call (519) 978-3237.

Andrea M. Thielk, BA, LLB, JD
President, CCI Windsor-Essex County Chapter

Vancouver Chapter

The Chapter Board has been busy since last Fall. We have been working diligently at the production of our first newsletter, creating a Chapter web site, and expanding our membership. We have also been talking with other professional organizations in an effort to work cooperatively with them to increase our profile in Vancouver and beyond. Finally, we have been arranging for exciting and innovative seminars to be held during 2003.

Our first seminar, on dispute resolution, took place on February 22, 2003. The guest speaker was none other than our newly elected President, Deborah Howes. Deborah graciously agreed to

come to Vancouver to share her wealth of expertise on this topic. With more and more owners and strata corporations finding themselves in disputes, this seminar was timely and very insightful for owners, managers and professionals alike.

As with all new Chapters, we have had growing pains. However, our Board has been meeting monthly to create a Chapter of which we and the National Board can be proud. As a result of this hard work, several new members have joined the chapter since the fall of 2002.

Jamie Bleay - President

Manitoba Chapter

As we look toward Spring, we are excited about the introduction of the Manitoba Condominium Course. This new course will be offered as three sessions during April and May. The material, covering all aspects of Condominium, is designed for Directors, unit owners and other interested persons.

Property taxes remain a real concern for Condominium owners, though all three levels of government continue to demonstrate a lack of interest. The Manitoba Chapter has obtained an independent analysis, prepared by Deloitte & Touche, which clearly shows that Condominiums are unfairly taxed when compared to other multi family housing. We will present this analysis to the

provincial government, members of the opposition and elected officials of the City of Winnipeg.

The construction of residential Condominiums – both in downtown Winnipeg and its suburbs, and in rural communities - is strong; numerous developments are in the planning stages for spring starts.

We are anticipating the arrival of Spring and tulip bulbs. They are among the best indications that it's the season for exterior repairs and maintenance, and beautification of our properties.

*Edie Lipson, President
CCI-Manitoba*

North Alberta Chapter

The North Alberta Chapter will be busy over the next several months with Education events and planning for the future.

The Board will be participating in a day of strategic planning in March, and all committees are busy with preparation and budgeting for the next fiscal year. The Membership Committee is looking at a number of initiatives to increase membership, while the Education Committee is working on increasing the number of Seminars to meet requests for information on a number of hot topics. Our Communications Committee is working on improvements to our website and continual enhancement of the *In Site* magazine.

This Spring's upcoming events include CM 100, 200 and 300 along with a Condominium Buyers seminar, a luncheon and an evening seminar. In response to member input, we held the CM 200 over several evenings, rather than the traditional weekend. Although the number of students was lower than anticipated, feedback regarding the format was positive. An evening CM 100 will be held in March.

Spring will also bring with it the National meetings, which are being held in Calgary in May. The Chapter Board members are looking forward to the short trip down Highway 2 to meet with the National Board and show our support for the South Alberta Chapter.

*Lise Warick - President
North Alberta Chapter*

Golden Horseshoe Chapter

Since our last report, the Board has met for a full day planning/strategy meeting to discuss the 2003 schedule.

Condo News: Last year, the newsletter started a Feature Condo article, for which Boards are invited to write to us and tell us about their community. We are continuing with this in 2003, and encourage submissions from condominiums in the Golden Horseshoe Region. Our plans are to choose a Condo of the Year from the submissions, and award them a plaque at our Annual General Meeting held this October.

Education: We have scheduled a half-day seminar (our introductory Level 100 course) in April for two locations in the Chapter's territory: Burlington (April 12th) and Kitchener/Waterloo (also April 12th). This Fall, we are planning to run the two-day Level 200 course on two consecutive Saturdays (October 18th and 25th); venues will again be Burlington and Kitchener/Waterloo.

Recognizing there is often confusion on how condominium meetings are to be properly conducted, the Chapter will be hosting an evening seminar on this topic in Milton on June 26th.

Our AGM is scheduled for October 9th in Burlington.

The details will be posted on our web site at www.ghccci.org.

City of Hamilton Waste Management Policy: Lou Sarafini Jr., of Fengate Property Management in Hamilton, represented the Chapter at a recent meeting with the City of Hamilton, Waste Management Division. The City is reviewing its policies on waste and recycling. One of their biggest concerns is accessibility to garbage by their increasingly larger pickup vehicles. In addition we can expect a more aggressive recycling campaign as part of the City's effort to

Northwestern Ontario Chapter

Our chapter is still alive and well despite suffering through one of the coldest winters on record. Growth in members is slow but we are attracting new members on a regular basis. We have run a number of condominium related seminars which have all been very well attended as there is a real thirst for education within our condominium community. On Saturday March 29th, 2003 we will be conducting our first Level 100 Condominium Administration course. A number of speakers from the Golden Horseshoe Chapter Board have graciously agreed to assist us and we anticipate a great turnout.

achieve a 65% reduction in waste. To encourage recycling, this program will include special blue box bags for high-rise sites; other residential sites can expect a reduction from six to three bags of garbage per household on collection day.

Hotline & Email: Our telephone hot-line and email response service is being overwhelmed with enquiries, often from non-members or from people who do not wish to identify themselves or their condominiums. We have recently instituted a requirement that all enquiries dealing with specific issues (legal, insurance, management, engineering, accounting etc.) be in writing.

Web-Site: Steve Warner is responsible for administering our web site, which has close to 20,000 hits. It continues to be an excellent resource to our members.

Membership: Currently, the Chapter has 494 members.

Board: Judith Byrom, the Chapter's Vice President, resigned last December. On behalf of the Board I would like to thank Judith for all her efforts and contributions. Karen Reynolds, who has been on the Chapter's board for many years, agreed to fill the Vice President's position.

Kim Coulter, A.C.C.I.

President

Golden Horseshoe Chapter

Ottawa Chapter

The Ottawa & Area Chapter will be holding a Special Information Session to be held in early April. Anyone wishing to know more about CCI Ottawa, our mission, our Directors' course or our other educational seminars is invited to attend.

The Chapter is planning to hold a Spring Directors' Course in late April. Plans are also underway to hold two Spring Seminars – one in May and the second in June. Since many Boards are asking questions about how are they are to deal with completed Reserve Fund studies. With that in mind, the Ottawa Chapter will be holding a seminar in May to address these questions this issue. The second seminar, to be held in June, will be a Health and Safety Seminar: Responsibilities of Condo Board Directors under the Occupational Health and Safety Act.

Fran Graf, R.C.M., A.C.C.I., President, Ottawa and Area Chapter

Fidelity Bonding



Routinely, Condominium or Strata Corporations across the country have significant amounts of money in their bank accounts because of collecting monthly condominium or strata contributions or fees and saving for reserve fund or other contingency requirements.

Although we always like to think the best of people who have access to these funds, occasionally, someone views personal needs or desires as more important than their responsibility or the collective good. Sometimes corporation funds are depleted or diverted through fraud, embezzlement or theft.

Now owners and directors cannot realistically physically count every penny every month. We invest savings until used – to increase returns. Chequing accounts enable us to pay bills on time – reducing interest charges and penalties. Yet both practices give the unscrupulous person potential unauthorized access to Corporation funds.

Every Corporation needs to have practices and policies in place to

attempt to stop embezzlement, fraud or theft (part of the risk management program). The Corporation also needs to have a way to replace misappropriated funds that cannot be recovered from the offender. Individual Directors do not want to be personally responsible for these losses. Neither do owners. One answer is fidelity bonding insurance coverage for losses arising from embezzlement, fraud or theft.

Three elements come together when explaining the need for fidelity bonding: the fiduciary obligation, tenants of risk management and the role of the Board or Council.

1. Fiduciary obligation: Condominium corporation employees, directors, officers, committee members and volunteers having custody or power over money, property or other assets of a

condominium corporation or the common elements are fiduciaries. According to two dictionary definitions a “fiduciary” includes: “Relating to or proceeding from trust or confidence. One stands in a fiduciary relationship with regard to another person when he has rights and powers he must exercise for the benefit of that other person.” *Barron’s Canadian Law Dictionary*, “A director of corporation” *Black’s Law Dictionary*.

2. Key risk management tenets are:

- Expect the unexpected
- Watch for the large loss factor
- Never risk a lot for little

3. Common to most condominium Acts is the duty of the board to control, manage and administer the

corporation and the common property. This includes the obligation to obtain, maintain, use and protect the Corporation's funds for the benefit of all.

Putting these items 1, 2 and 3 together sets up the need for a practice of prudence: the board should procure fidelity bonding. Whether the declaration or bylaws specifically call for bonding or not is almost immaterial. Procuring fidelity bonding is a sound thing to do and is a proper expense of the condominium corporation. It is, needless to say, good to memorialize the requirement for the current and future boards to procure fidelity bonding by means of including a prescription for it in the declaration or bylaws, most generally in the insurance bylaw.

The fidelity bonding declaration item or bylaw should be carefully drawn up by the developer's or corporation's counsel in consultation with an experienced insurance advisor, an insurance broker or consultant.

We say carefully drawn as those who do so are relied on by successive boards and others as set up in the 1964 *Hedley Burns v. Heller* case. In this case, it was determined that the law recognizes certain circumstances where an innocent but negligent misstatement may give rise to liability in damages, regardless of the absence of any contractual relationship.¹

By extension, counsel for developers, Condominium corporation counsel, accountants/auditors, property managers and insurance people may all be relied on to prescribe or to have prescribed fidelity bonding. It follows from this that if fidelity bonding is found absent or inadequate, that there can be lots of people answerable.

If everyone is doing their duty, it should be virtually impossible for there not to be fidelity bonding in place, especially after one knows of the availability of it.

Availability of fidelity bonding

The most common kind of fidelity bonding for condominium corporations is a Commercial Blanket Bond. Such a bond applies to all those shown as being bonded on a "blanket" basis. The standard printed form automatically bonds all employees of the entity. No names or positions are shown in the bond; every employee is bonded the instant they become an employee.

To make such a bond suit the purposes of a condominium corporation, a common technique is for the definition of employee to be expanded to include directors, officers, committee members and volunteers.

Standard insurance company printed bonds do not include coverage on directors, officers, committee members and volunteers. Look for an endorsement or especially composed text. This is a reason condominium corporations tread on dangerous ground if they procure their insurance and bonding by asking for "bids" or "quotes". The coverage specifications must be carefully drawn up. A condominium corporation cannot get insurance and bonding "off the shelf" without great risk. Remembering that the directors are fiduciaries, it is the directors that would have to dig into their own pockets for shortcomings in the corporation insurance and bonding. The material fact is not that one corporation insurance and bonding offering is, say, ten percent or twenty percent cheaper than another; the material fact is whether the insurance and bonding product bought covers a situation at all.

Other kinds of bonds exist - individual bonds and scheduled position bonds, for example, but these archaic forms have not been in general use for decades. The optimum kind of bond for a condominium corporation is a Commercial Blanket Bond. In the

form of policy called a Comprehensive Dishonesty, Disappearance and Destruction Policy (or rider), the Commercial Blanket Bond is found in the Insuring Agreement called "Employee Dishonesty Coverage - Form A".

Another kind of blanket bond is a Blanket Position Bond where the amount of the bond applies to each person bonded. With this kind of bond, the bond amount is multiplied by however many people are involved in a defalcation. Because of this, they are more expensive and prudent underwriters usually insert an aggregate limit of, generally, three times the principal amount.

How much bonding?

This is a judgement call. How much money is on hand at any given time is no measure. All that might be suggested is that an individual modest sized condominium corporation have, say, a \$100,000 Commercial Blanket Bond. Larger condominium corporations might want to consider more. Remember those three risk management tenets. Ask for the opinion of accountants and the corporation's auditor. Maybe \$1,000,000 or more is warranted. Have the corporation's insurance broker secure prices for various limits and deductibles.

Insurance and bonding companies give premium reductions for deductibles. See what a \$ 5,000 deductible would save.

An important bonding service

Bonding companies gladly provide blank bond application forms for individuals to complete. Completed forms can be routed through the corporation's insurance broker, or, for greater security, can be sent directly to the bonding company underwriter.

It is a matter of the form including the bond number and the broker providing the bonding company's address. In common practice, if nothing is awry, nothing is heard. If something requires further investigation, the condominium corporation hears about it. Everybody covered by the bond remains covered by the bond unless and until an endorsement is issued and is signed by the condominium corporation.

A good risk management tool

Each incoming president or treasurer should make it their first duty to check to see that the corporation's bond is in effect and is satisfactory. Just like a bank inspector would personally touch security instruments and cash to verify their existence, so should the incoming president or treasurer actually touch and examine the bond. No verbal assurances should be taken.

Cost

In Canada, insurance and bonding costs are relatively moderate. As mentioned, have the corporation's insurance broker secure prices for various limits and deductibles.

Availability

In over thirty years of involvement in condominium insurance and bonding, this writer has never encountered the unavailability of bonding for condominium corporations.

"But we have a foolproof accounting system"

Oh yeah? There are as many ways to embezzle as there are brain cells in a crooked person's head. Read the terms of engagement your auditor makes you sign each year. There just ain't any such thing as a foolproof accounting system.

Application

Bonding companies require completion of an application form before issuing a bond. Be sure it is completed accurately and promptly. One question common to most is: "Will money and securities be under the control of two or more persons?" Another is: "Will cheques be signed only after they are drawn?" Important questions. Important answers.

Summary

Bonding is essential. It is available at reasonable cost and should be for an adequate amount. Incoming presidents and treasurers should insist on actually seeing the bond.

Make sure it is a blanket bond and that it is extended to include directors, officers, committee members and volunteers.

Managers, management companies

Bonding is essential on all the principals, employees and agents of managers and management companies. The practice of adding management companies to the corporation's bond and or adding condominium corporations to management companies' bonds is, as they would say in the medical profession, contra-indicated. We'll tell you why in the next issue of CCI Review and will give easy to use risk management tools to be certain your condominium corporation is protected.

By Hugh Falconar, CIP, F.C.C.I.

¹ Enron Insurance Managers Inc. Loss Control Bulletin No. 16

Director/ manager fraud it does happen:

- A board member was skimming money off the laundry room income. He kept "forgetting" to give the deposit receipts to the on-site secretary. Someone finally looked into it and he eventually admitted that he had taken approximately \$7500 (in quarters!).

- A director/treasurer put reserve moneys into a term deposit at his own bank because it was offering the best rates at the time. By mistake the account was made out in his own name. He kept meaning to fix it but never did. He was a gambler, suffered significant losses and the bank called his loans. In the process the bank seized the term deposit. He eventually paid the money back.

- Another director in a self-managed 25-unit site had assumed responsibility for the financial affairs of the condominium. This condominium hadn't issued financial statements to the owners for years. Over a number of years this director stole corporate funds by forgoing a second signature on condominium cheques. Eventually he was caught but the money was never recovered. This cost each unit owner a \$1000 special assessment.

Condo Cases across Canada



I have been asked, and it my pleasure, to provide these brief summaries of some of the recent Court Decisions, across Canada, respecting condominium matters. I can't provide summaries of every decision. I have selected a handful that I hope readers will find interesting. I look forward to preparing this regular column for the CCI Review, and I hope you enjoy these legal updates.

By James Davidson, L.L.B.
Nelligan O'Brien Payne

The Hot Topic – Short-Term Tenancies

The current hot topic is the legality of short-term tenancies, better known as “hotel-like uses”. This topic has recently boiled over in Ontario.

In recent months, there have been two key court decisions on point. Let me deal first with the most recent decision.

Skyline Executive Properties v. MTCC No. 1385 (December 20, 2002)

109 Front Street East, Toronto, comprises two condominiums, namely MTCC No. 1280 and MTCC No. 1385. These condominium corporations have been in a battle with Skyline

Properties respecting the rights of Skyline Properties to lease units for short terms, resulting in a use which the court described as “akin to an hotel or apartment hotel”.

In addition, while this battle has been joined, Skyline has continued to acquire units. At the time of the court hearing, Skyline owned, operated or managed very nearly half of all units in MTCC No. 1385.

The court was asked to consider the following questions:

1. Did the short-term tenancies contravene the provision in the condominium declaration that each unit would be “occupied and used only as a private single family residence and for no other purpose”?

2. Did the short-term tenancies also violate the corporation’s rules which generally prohibited tenancies which were shorter than six months in duration?

3. Should an administrator be appointed pursuant to Section 131 of the *Condominium Act*, 1998 in light of the extent of Skyline’s ownership interests and the “obvious tension between two distinct groups having divergent interests” in the condominium?

The court’s answers were as follows:

1. The provision in the declaration does prohibit the short-term tenancies and the resulting hotel-like use. The hotel-like use is not “a private single family residence”.

2. The rules of the condominium corporation, including the rule prohibiting most tenancies shorter than six months' duration, were properly enforceable. Those rules served primarily to further define the aforesaid provisions in the declaration. Skyline Properties could not avoid the clear requirements of the rules whether or not Skyline had acquired units prior to the passage of the rules.

3. This was a proper case for the appointment of an administrator. The court said:

"there exists a state of disequilibrium in the condominium corporation, precipitated by the obvious tension between two distinct groups having divergent interests. On the one hand, we have the owner-occupied units whose interest lies in what they perceive as an atmosphere whose dominant characteristics are those of a "private single-family" dwelling. That, they maintain, is consistent with their reasonable expectations when they purchased their units, as it is with rule E, which represents a proper exercise of the condominium corporation's jurisdiction. On the other hand, we have the group, represented by Skyline, whose interests are principally commercial. That group are essentially absentee landlords, many of them overseas. In other words, their concerns relating to the prevailing atmosphere in the condominium complex is far less immediate."

At about the same time, yet another decision was forthcoming:

Apartments International Inc. v. MTCC No. 1170 (October 4, 2002)

MTCC No. 1170 is a luxury residential condominium in downtown Toronto. Apartments International operates its business by leasing residential condominium units from some of MTCC No. 1170's unit owners and then marketing these units to members of the

public as "furnished travel apartments" on a "pay-per-stay" basis. As a reaction to the use of units by commercial, hotel-like operators, the condominium corporation passed rules which, among other things, prohibited leases for a term of less than three months and occupancies for transient or hotel purposes. The condominium corporation then wrote to owners, demanding that they terminate their leases with Apartments International and that tenants of Apartment International be denied access to recreational amenities.

Apartments International then sued the condominium corporation for damages resulting from alleged interference with its contractual relations and its economic interests.

The condominium corporation brought a court motion seeking an order for summary dismissal of the lawsuit, on the grounds that there was no basis for the claims against the condominium corporation. The court agreed and threw out the lawsuit. The court said that "there is nothing illegal or unlawful in MTCC No. 1170 taking steps to ensure compliance with (the particular rules)". The court said that this was the condominium corporation's obligation under the Condominium Act. The court also said that the letters sent by the condominium corporation to unit owners were justified. Finally, the court found that there was no evidence of economic loss upon which there would be any real chance of success at trial.

The bottom line is as follows. Condominium corporations are succeeding in their efforts to prevent "hotel-like" operations in "normal" residential condominiums. Furthermore, the courts seem to be prepared to step in where there is a danger that the "hotel-like" operators may gain control of the condominium.

I suspect that the war is by no means over. The stakes are high. There is an obvious market for such short-term tenancies and the potential revenues are evidently significant. However, the battles, thus far, have been won by the condominium corporations.

Cases From British Columbia

[Editorial note: In B.C., condominium corporations are "Strata Corporations", Boards and the Board of Directors is the "Strata council".]

Hatch v. Quadra Plex Development Corp. (November 28, 2002)

Individual strata plan unit owners cannot sue anyone (apart from the Strata Corporation itself) about the common property. The strata unit owners may, however, have basis for claim against the Strata Corporation if they are not treated fairly by the strata council (which could include the Strata council's failure to take action on their behalf).

Taychuk v. Strata Plan LMS744 (November 28, 2002)

Strata Plan LMS744 is a 139-unit, 25-storey highrise. Off and on, over several years, the hot water from the taps in suite 1204's ensuite bathroom had been discoloured (a yellow-brown colour).

The owners of unit 1204 asserted that the Strata Corporation had failed to fulfill its repair and maintenance responsibilities by failing to correct the discoloured water.

The Court said that the Strata Corporation cannot guarantee that water is never discoloured. The Court said "The Strata Corporation is obligated to act reasonably to maintain and repair the pipes, including making

good plumbing which is causing water discolouration. If pipes caused a serious and imminent health risk, a Strata Corporation might be obligated to take immediate steps to solve the problem. Where the problem is aesthetic only, as is the case here, it is reasonable for the Strata Corporation to take more time. In either case, the Strata Corporation is entitled to rely on reasonable expert evidence."

The Court said that "the obligation to repair and maintain must be interpreted with a test of reasonableness". The Court followed similar reasoning previously set out in the decision: *Wright vs. Strata Plan No. 205*.

After setting out this test, the Court then found that the Strata Corporation had failed to act reasonably in the fulfillment of its repair and maintenance responsibilities during the period July 1, 1999 through December 31, 2000, but had otherwise acted reasonably. The Court specifically noted that the Strata Corporation acted reasonably in hiring an expert, and in following that expert's advice with reasonable haste – beginning in 2001.

[Editorial Comment: This is another helpful decision from British Columbia respecting the obligations of Condominium Corporations. Condominium Corporations are not "guarantors" of the common elements. In other words, Condominium Corporations do not guarantee that the common elements will at all times be in satisfactory condition. The obligation upon Condominium Corporations is to take reasonable steps to repair and maintain the common elements. Such reasonable steps could include appropriate periodic inspections, scheduled periodic maintenance, attendance to problems with reasonable haste once those problems are brought to the corporation's attention, hiring experts to assist, where appropriate, and then following the advice of those experts with reasonable haste.]

Strata Plan LMS 1400 v. Objekt Properties Corp. (October 7, 2002)

The Vancouver Charter protects the City of Vancouver from any claims for failure to discover contraventions of municipal by-laws during the City's inspections of construction. However, it was not clear that the Charter extinguished the cause of action for failure to **warn of a defect**. Therefore, such claims (failure to warn) were permitted to proceed.

Strata Plan NW3341 v. Delta (Corp). (September 17, 2002)

In one of Canada's landmark decisions respecting the liability of municipalities related to construction defects, Delta was found liable to condominium owners for damages resulting from wood rot. Delta was found liable on the basis that it breached its duties respecting inspection and supervision of the construction. Delta appealed.

On appeal, Delta argued that the claims had been commenced against it after expiry of the applicable limitation period. Delta also argued that the condominium owners should have been found to be contributorily negligent (for poor maintenance).

Delta's appeal was dismissed. The British Columbia Court of Appeal agreed with the trial judge that the limitation period did not commence until the magnitude of the damages had become clear. The Court of Appeal also concluded that there was no contributory negligence on the part of the Strata Corporation.

Strata Plan VR 1280 Oberto Oberti Architecture (January 10, 2003)

The Strata Corporation had asserted claims on behalf of individual owners. Under British Columbia's Condominium Act, the Strata Corporation could do so only if the owners consented in writing and if the claims had been authorized by

special resolution of the Strata Corporation.

The defendants asked for proof of the consents and of the special resolutions. The Strata Corporation took the position that those documents were protected by privilege.

The Court said that the defendants in the Court Action were entitled to see the consents and the special resolution. The Court said that the concept of privilege has no application to such documents. Those documents were created specifically for the purpose of authorizing the litigation and the defendants were entitled to enquire into the plaintiff's authority.

Giroday v. Strata Plan VIS 3242 (January 17, 2003)

Section 49 of British Columbia's *Condominium Act* states as follows:

Unless otherwise provided by a bylaw added to Part 5, a strata council must not, except in emergencies, authorize, without authorization by a special resolution of the strata corporation, an expenditure of more than \$500.00 which was not set out in the annual budget of the corporation and approved by the owners at a general meeting.

Lawyers hired by the strata council (for advice respecting possible building deficiencies) submitted invoices in excess of \$500.00. There had been no special resolution to authorize these expenditures. Nevertheless, the Court said that the lawyers were entitled to be paid. The Court said:

"I do not believe that Section 49 was intended to prevent tradesmen such as plumbers or electricians, who have done work for a Strata council in excess of \$500.00, from being paid, simply because no special resolution has been passed to authorize an expenditure over \$500.00. The sec-

tion, it seems to me, is aimed at the internal management of the Strata Corporation and not at external relations with persons such as plumbers, electricians or solicitors.”

In effect, the lawyers were entitled to assume that the Strata Corporation had the authority to engage them and had followed proper internal procedures to establish this authority.

[Editorial Note: In corporate law, this principle is termed the “indoor management rule”.]

Other Ontario Cases

Ontario New Home Warranty Program v. Singer (October 2, 2002)

The court confirmed, again, that the Ontario New Home Warranty Program applies to condominium units purchased as tax sheltered investments. Furthermore, amounts paid to a developer for “services” may qualify as part of the price of the “home”, covered by the remedies under the warranty legislation.

Ward-Price v. Mariner’s Haven Inc. (November 5, 2002)

A condominium purchaser was granted certification for a class action under which the purchaser could seek to recover interest payable on her deposit (for herself) as well as on the deposits paid by other members of the class (i.e., for other purchasers).

How to Prevent Human Rights Violations in Your Condo



A Minefield for the Unwary

The Human Rights Code of Ontario (Code) and other similar provincial legislation is a minefield for the unwary. In spite of the dangers, most condominiums lack the safeguards that many business owners now consider essential policies. Rob Giesbrecht, a Winnipeg condo-lawyer, told the delegates at the 6th annual Condominium Conference, “directors cannot understand how human rights legislation could possibly have any application to a Condominium Corporation.” Condo corporations are not exempt from human rights legislation, so directors have a duty to make sure their corporations comply. Rob said, “A prudent Board will be aware of the risks and mitigate against them by adopting practices and policies that will protect against violations.”

Free From Discrimination

Every person has the right to be free from discrimination based on “race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, **family status, handicap** or the receipt of public assistance by virtue of Ontario’s Human Rights Code. Thus, anyone who provides accommodation, employment, services or facilities, or association membership, has a duty to supply them, discrimination-free. This is a heavy duty and one condo corporations cannot escape.

Discrimination in Practice – Dogs and Children

Does your condo have a “no pets” policy? Waterloo Condominium Corporation No 198 did have a ‘no pets’ clause in its declaration and in 1997 it came under attack. Mrs. Donner, an owner, was hearing impaired. She bought a dog to help with her hearing disability. This did not go down well with the Board, so the corporation went to court to force Mrs. Donner to get rid of her dog. The court said, “no.” Mrs Donner got to keep her dog, because the Human Rights Code took precedence over the condo declaration. The Code protected her disability.

Condo Directors should paste the above words of the Code on their meeting agendas as a reminder that their decisions may be subject to a Code review. Apparently the directors of Metropolitan Toronto Condominium Corporation No 741 thought they could ignore the Code. This condo had a rule that prohibited children under the age of 16 from using certain recreational facilities. The Board believed it was acting in the best

interest of the children. The Court saw it differently. An Ontario Court held the rule was discriminatory based on “family status.” Surprise! It should not be, because it’s a term and a right in the Code. The judge said the condo rule had a “disparate negative impact on parents who lived in condominiums.”

Controlling Harassment Between Unit Owners

Most condo corporations are employers and providers of facilities and services to their owners. Thus, they are under an obligation to have in place policies and procedures to prevent or deal with all acts of discrimination. This includes acts of discrimination between members. I’m not aware of any reported Canadian court cases, by unit owners, against a condo corporation for failure to prevent discrimination between owners. The chances are high there will be, because these cases are popping up in U. S. Courts.

A condominium association, as reported by the U. S. District Court for the District of Columbia, failed to stop one of its members from harassing another member and agreed to pay more than \$600,000 to settle a Fair Housing Act suit. The plaintiff claimed that after she cosigned a letter warning another resident about abusing pool privileges, he initiated a campaign of racially and sexually offensive remarks. He left a note on her door that read, “See you in the backyard—hanging from a tree.” The condo by-laws authorized the association to take action against the resident for creating a nuisance or committing an illegal act. The plaintiff repeatedly asked the association to stop the harassment. The association, however, did nothing more than send a few letters.

An Awesome Duty

Condo directors who don’t set in place defensive measures to prevent or avoid a human right’s attack may find themselves on the wrong end of a Code violation or as a minimum they expose their corporations to expensive law suits. As a minimum, condo corporations should:

- Adopt a non-discrimination and anti-discrimination policy that includes effective avenues for owners and employees to bring forward complaints;
- Periodically distribute a clear statement of these policies to all owners and employees to make sure they know of their existence and understand the complaints process;
- Promptly respond to all complaints and thoroughly investigate them to decide if there have been violations of the policy;
- Take prompt and appropriate remedial action to enforce the policy.

*By Milton W. Zwicker, B. Comm., LL.B.
Zwicker Evans Lewis LLP Barrie & Orillia, ON member of the Board of Directors Huronia Chapter*

Lucien Roy, FRI(E), CPM,
A.C.C.I., ACM, CMOC,

Vice President/Property Management,
Senior Property Manager



Lucien Roy has been involved in the Real Estate Industry since 1981 and with the Property Management specialty since 1982.

Lucien received his CPM (Certified Property Manager) designation in February of 1993; his FRI(E), Fellow of the Real Estate Institute (Executive) designation in February 2000, and his Certificate of Real Estate from the University of Alberta in June of 1992. In May of 1996, Lucien was awarded his ACCI, Associate of the Canadian Condominium Institute. In addition, Lucien received his ACM (Accredited Condominium Manager) from the Association of Condominium Managers of Alberta in July 2001. This was followed by an intense course of studies where he obtained his CMOC (Certified Manager of Condominiums) designation from the Real Estate Institute of Canada in March 2002.

He is a long-standing member and recently, director of the Real Estate Institute of Canada (REIC), holds a directorship on the local Chapter of the Institute of Real Estate Management (IREM) and has worked with this Chapter during the past ten years. In addition to being a director on the IREM Canada Council, he also holds a directorship on the local North Alberta Chapter of the Canadian Condominium Institute (CCI). Lucien is also a member of the Standing Committee - Licensing Education with the Real Estate Council of Alberta (RECA).

Lucien currently holds the position of Senior Property Manager with Estate Management Ltd. and the position of Vice-President/Property management

with the sister company, Estate Properties Incorporated.

Since 1982, Lucien has managed a large portfolio of residential (high-rise, walk-ups, townhouses), condominium and co-operative properties. The management of these properties included ongoing site inspections, the training and supervision of staff, developing preventive maintenance programs, completing operating and capital budgets and developing long-range management plans for the properties. Extensive experience has been gained in the identification, planning and tendering processes of many capital projects and tenant improvements.

Further experience has been gained in the training and supervision of facility managers, property administrators, property accountants and property managers. Implementing systems to accommodate the team concept by developing various strategies has been a factor in the retention and value enhancement of the properties.

Throughout this time period Lucien has been very much involved in the marketing for each of the properties in his portfolio. Included under these marketing programs has been new business development.

7th Joint CCI/ACMO Annual Condominium Conference

November 7 & 8, 2003

International Plaza, Hotel & Conference Centre
Toronto, Ontario

CCI/ACMO are already offering Sponsorship Opportunities for this event, as well as Opportunities to Exhibit.

For more information, visit the CCI web site at:

www.cci.ca/Events

CCI-National

#310-2175 Sheppard Ave. E.
 Toronto, ON M2J 1W8
 Tel.: (416) 491-6216
 FAX: (416) 491-1670
 E-mail: cci.national@taylorenterprises.com
 Web site: www.cci.ca

CCI-Vancouver

E-mail: BCCCI@vancondo.com

CCI-North Alberta Chapter

E-mail: info@cci-north.ab.ca
 Web site: www.cci-north.ab.ca

CCI-South Alberta Chapter

E-mail: info@cci-south.ab.ca
 Web site: www.cci-south.ab.ca

CCI-North Saskatchewan

E-mail: chetan@suncorp.ca

CCI-Regina

E-mail: Nrandy_@excite.com

CCI-Manitoba

E-mail: cci@cci-mb.com
 Web site: www.cci.ca/Manitoba

CCI-Toronto & Area

E-mail: cci.toronto@taylorenterprises.com
 Web site: www.ccitoronto.org

CCI-Huron

E-mail: cci.huron@rogers.com
 Web site: www.cci.ca/Huron

CCI-London & Area

Web site: www.cci-sw.on.ca

CCI-Ottawa

E-mail: ccioottawa@magma.ca
 Web site: www.cci.ca/ottawa

CCI-Golden Horseshoe

E-mail: ghc.cci@hwc.org
 Web site: www.ghccci.org

CCI-Windsor-Essex County

E-mail: amthielk@clarkslaw.com
 Web site: www.cci.ca/Windsor

CCI-Northwestern Ontario

E-mail: ccinorthontario@shaw.ca

CCI-Atlantic

E-mail: info@cciatlantic.ca
 Web site: www.cciatlantic.ca



“Owners are
 from Mars ...
 Managers are
 from Venus”

2003 National Spring Conference

Hosted by CCI South Alberta Chapter

Saturday, May 24, 2003

Sheraton Suites Eau Claire
 Calgary, Alberta

Join us in Calgary, Olympic City and gateway to the Canadian Rockies for the 2003 Canadian Condominium Institute Spring Conference.

Seminar topics to include:

- * Dealing with Difficult People
- * Industry Panel - ‘The Golden Rule’
- * Who, How, What & When to Plan
 - * Resolution or Revolution
 - * Are you Covered?
- And Trade Show

Full program and registration form is available on the website - www.cci.ca/Events or call (403) 253-9082, email: cci@incentre.net