

review

THE VOICE OF CONDOMINIUM

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

National Edition Spring 2004

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in
ST. JOHN'S, NEWFOUNDLAND

**DELTA ST. JOHN'S
HOTEL AND
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May 26-29, 2004

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63 Owners Lost Their Homes in a Nightmare Edmonton Fire



Deborah Howes
CCI National President

Recently, some condominium owners in Edmonton experienced a nightmare - a fire in their building. This was no small or ordinary fire. Sixty-three units in one building were destroyed. Damage is estimated to exceed \$11,000,000.00. The fire occurred during one of Edmonton's famous "deep freeze" cold snaps. Not only did this create additional problems for the firefighters, but it continues to create problems for the condominium owners. As the firefighters doused the fire with water, it froze and created ice blocks. Encased in these blocks of ice, well after the fire was out, are the owners' cars and some of the common property. Those owners whose units, in another building, were not touched by the fire, continue to be significantly impacted by it.

This tragic story demonstrates the nature of condominium communities. When we share common walls and floors, we depend on the developer to have built the building in a way that meets the legislated building standards, as well as providing us as safe an environment as possible. We rely on every owner to cooperate with the Board to ensure the property remains safe for all of us. We need appropriate insurance coverage, risk management strategies and crisis planning. The actions or omissions of one person can significantly impact the

whole community.

As other condominium managers and professionals in the city heard of the fire, they began contacting the manager to identify vacancies in their projects where displaced owners might relocate. The manager began calling every owner to identify their temporary contact information, so the corporation could offer assistance and meet its bylaw obligations. He encouraged them to call their own insurance companies. Through the local media, CCI contacts and professionals began ensuring that all owners contacted their own insurance adjusters. Sadly, some of the owners did not carry unit insurance. The manager is working with insurance adjusters (both property and vehicle) to move claims forward as quickly as possible. Through CCI networks, the affected manager and professionals are able to benefit from similar experiences in other condominiums in Edmonton and Calgary in the last four years.

While the Edmonton story will take time to fully unfold, we all hope that it will bring a brighter future for those condominium owners. We expect this to be an ongoing topic for discussion at our CCI National mid-year meetings May 26 - 29 in St. John's Newfoundland. I hope to see representatives from every Chapter at those meetings. Those representatives can then continue the discussions with you, in your Chapter and in your condominium or strata community.

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How Liability Can Stalk Voluntary Organizations Their Directors and Employees

by © Milton W. Zwicker, B. Comm., LL.B., 2004

Liability may stalk you if you are a board member of your local CCI chapter or any other community based not-for-profit corporation or group. Many members of the communities you serve, will perceive you to have special knowledge to answer questions they have. Many of us, who sit on boards, will do our best to answer questions that our constituents ask. Let's assume, for example, you sit on the Board of Directors of a CCI chapter. Now, a unit owner seeks you out for an answer to this question: "What insurance coverage should I carry for my unit?" You believe there is no need for an owner to carry insurance coverage for any improvements because the condo corporation is responsible for damage to all improvements. The owner renews his policy and it does not include coverage for improvements he made to his unit. Shortly, after you give this advice, a fire damages the unit. The unit owner quickly discovers the condo corporation's insurance does not cover the improvements the unit owner made. An angry owner now stalks you for an answer to this question: "Why did you tell me it was not necessary to have fire insurance coverage for the improvements I made to my unit? I thought you knew what you were talking about. My lawyer tells me I should sue you and your organization for my loss because you gave me bad advice."

Licking Liability Wounds

Does the unit owner have a case against you and your group? I say "no" but, if I'm wrong, don't sue me. I'm willing to say the answer is no because of a recent decision of the Ontario Court of Appeal. In **Morgis v. Thompson Kernaghan & Co. Limited** (TK Co), a group of investors tried to get the Court to hold the Investment Dealers Association of Canada (IDA) and certain of its officers and employees liable for their losses. TK Co, a brokerage firm, was a member of IDA. IDA, like many voluntary organizations, such as CCI, has its own constitution, bylaws and rules. The Plaintiff investors sued TK Co for their losses but TK Co filed for bankruptcy. The investors, not happy

to lick their wounds, decided IDA must be liable because TK Co was a member. TK Co violated the rules of the Association, so in the minds of the investors this made IDA liable for their wounds of \$5.75 million. The Court saw it otherwise. The Court uses some well established legal principles to deny the investors their losses against IDA. The labels the law attaches to these legal principles are "foreseeability" and "proximity", Madame Justice Cronk, said, "... it is necessary to determine whether the circumstances disclose foreseeability of harm and sufficient proximity to justify the imposition of negligence." Here, the court held it could not find these elements, so IDA did not owe a duty of care to the investors. To find a duty of care, the law requires a close and direct relationship between the party complaining of a loss or wrong by the organization. Again, Justice Cronk, said, "Recognition of a duty of care must be justified on the basis of a sufficiently close and direct relationship between the parties as to satisfy the foreseeability and proximity requirements" of the law. Here, the relationship consisted of the complaint the investors made to IDA, receipt of the complaint and follow-up with the IDA officials. A mere contact by a member of the public with a particular organization is not enough to create a close and direct relationship. Thus, a voluntary organization is not liable for the civil wrongs of its members for failure to ensure their competence and good character. If you are so inclined, you can read the full text of the Court's decision at www.ontariocourts.on.ca/decisions_index/2003index.htm. You will find it under the June 2003 decisions.

Proceed With Caution

This decision does not mean, when you represent your group, you can be careless with advice when you answer questions from members of the public. If your advice causes someone damages, you open the door for a claim against you and your group. Remember that some future court may find a duty of care. Thus, when you represent your organization,

like a CCI chapter, you should make sure you qualify your answers by advising the person making the enquiry to obtain professional advice. Also, your CCI chapter should establish policies for how its representatives (usually directors) should answer questions and reply to enquiries from its members and the public. You don't want your representatives giving your constituents bad advice. The law may protect you from a claim for damages, but in time the reputation of your organization will suffer. CCI, like many voluntary organizations cannot ignore complaints against its members.

CCI Code of Ethics

CCI does have in place a code of ethics that requires its members to conduct themselves with integrity, honour and professionalism. CCI uses the following procedure to handle complaints against its members:

- The complainant must put his or her complaint in writing and send it to the CCI National Office, accompanied by a cheque for \$250.00.
- If the complaint is against a member who belongs to a profession, governed by legislation (for example, an engineer or lawyer), CCI will return the complainant's cheque and recommend he or she file the complaint with the member's governing body.
- If the complaint is valid, CCI will send a copy of the complaint to the member and request him or her to respond within 30 days of receiving the complaint.
- Once CCI receives a response from the member, the CCI National Executive will review, evaluate and decide how to handle the complaint.
- CCI will put its decision in writing and send a copy to the person who filed the complaint, the member and the member's Chapter.

CCI designed this complaint process to regulate the conduct of its members and protect the public overall. According to the **Morgis** case, the process does not increase your risk of liability for damages from a complainant. If you are a director of a CCI Chapter, you can take comfort in a statement Justice Monk adopted. "In my view the IDA's obligation is to protect investors generally and the public in general. It does not extend to any particular investor, notwithstanding a complaint about a member."

Why National has Moved to Prohibit Chapter Members from Dispensing Advice Through Hotlines and Newsletters

What catastrophic event makes a members' organization decide to stop giving advice to members? Strange question and sadly an all too familiar answer – the ever growing litigious environment of our country. We can argue this is yet another example of American culture moving north, however, that is too simple an explanation. I feel Canadians, and especially Canadians in condos, are smart enough to only adopt American and other outside influences which are beneficial to them. Why we have so quickly embraced a more litigious, shotgun approach to conflict resolution and the quest to find someone to blame, remains a mystery to me.

The English legal maxim governing the area of a person with special knowledge dispensing advice arises from an English case affectionally known by all lawyers as Hedley Byrne which was actually cited as Hedley Byrne & Co. Ltd. v. Heller [1964] AC 465 (HL). Its focus lay in what circumstances a person could recover damages for loss suffered by reason of having relied on an innocent but negligent representation of another. The case concluded that a person holding them-

selves out as having special knowledge in a particular area could, in fact, be found responsible for another person relying on their advice to their detriment.

The basic premise of Hedley Byrne characterizes our Chapter Hotlines, where tireless volunteers dispensed helpful advice to condo interests, which from time to time may have been 'innocent but negligent representations'.

The American litigious beast coupled with solid English case law culminated in your National Board regrettably deciding to prohibit the dispensing of advice through such vehicles as Hotlines and Newsletters. You are encouraged to report to your heart's content but not to offer advice for fear of the ghost of Hedley Byrne, for your protection and the protection of CCI.

A sad but necessary day influenced, one could argue, by our parental and sibling countries – truly communities of all sizes can prove to be dysfunctional from time to time.

Patrick I. Cassidy, Q. C.

Mark Your Calendars Now!

CCI Semi-Annual Conference
May 26-29, 2004
St. John's, NF

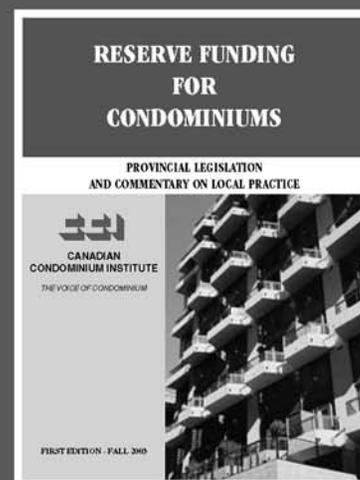
Hotel

Delta St. John's Hotel and Conference Centre
120 New Gower Street, St. John's, NF
Tel: (709) 739-6404

[Be sure to say you are with the CCI Conference]

Watch for more details on
the CCI website:
www.cci-ca/Events

New Publication available from your local CCI Chapter



This publication sets out provisions of each Provincial or territorial legislation that deals with the development of reserve or contingency funds, reserve fund studies, and reserve fund planning.

Also included are brief comments on local practices from well known condominium lawyers and property managers.



North Saskatchewan Chapter

We continue to work on growing our chapter and being the “Voice of Condominium in North Saskatchewan”.

Most recently, we have been involved with the Department of Justice on “the regulations” of the pending amended *Condominium Act*. We participated in consultations with the Department prior to the Christmas Break and we look forward to more consultation in the spring months. The emphasis on the amendments and the corresponding regulations is to lend more clarity to insurance matters, reserve funds and voting rights.

Our chapter is just completing the mail-out of our “Winter Newsletter” with focus on the *Privacy Act, 2004*. In conjunction with the newsletter we will be presenting a seminar on April 24, 2004 in a day long format on the “*Privacy Act, 2004*” and a secondary topic of, “Financial Statement Presentation for Condominium Corporations”.

Our committees continue to be active, focusing on growing our membership and expanding our educational offerings. To this end, our Education Committee has begun set-up of the Condominium 100, 200 and 300 course series. We express our deepest thanks to the Southern Alberta and Northern Alberta chapters for all

their assistance here, saving us from “re-inventing the wheel.” We will further this endeavour via discussions with our colleagues in the South Saskatchewan Chapter. As we have developed as a Chapter, we have emphasized very prudent management of our fiscal position, and we are accumulating funds to push forward with these educational components. In addition, we are examining utilizing funds to complete a “membership drive” and our Advertising/Membership Committee is developing a “mini-marketing” plan to achieve this.

I would be re-miss not to credit the full Board which has been cohesive and diligent in its efforts to maintain/grow the Chapter in the face of various challenges this year. We hope to have a more active membership base in the future. In the interim this Board has exemplified the “volunteer spirit”. Our Board is Alice Silvester – Vice-President, Nicki Kiteley – Treasurer, Lexi Jamieson – Secretary, Tony Lazaruko – Director, Membership Committee, Joe Popoff – Director, Education Committee, and Scott MacDonald – Legislative Committee.

*Chetan Thakore, President
CCI North Saskatchewan*

Windsor Essex County Chapter

We started the year off right. Our Chapter’s Board of Directors was honoured with a visit from CCI’s National Vice President, Gerrit Roosenboom, CCI (Hons). Gerrit provided our Board with practical tips for our Chapter’s continued growth and success.

We’re also excited about our 2004 line-up for seminars. These seminars are a “must attend” for all property managers, directors and owners.

First, we’ll have Mark Shedden guide us through the complex topic of condominium insurance. Mark is Vice-President of Atrens-Counsel Insurance Brokers Inc. which acts as the general insurance broker and advisor to over 2800 registered condominium corporations in Southern Ontario. This comprehensive half-day program will answer your questions on how your condominium’s insurance works: Is your condominium adequately insured? When should you make a claim under your insurance and when should you not? How to keep your premiums from skyrocketing? How to avoid having your condominium’s insurance cancelled? How do the Standard Unit By-law and the Insurance Deductible By-law affect making a claim under your insurance? When can you charge back to owners the costs for repairs? These questions and more will finally be answered. In addition, risk management techniques will be reviewed

to assist you with providing further protection for your condominium.

Then, Ronald Danks of Simpson Wigle Barristers and Solicitors, will show us the ropes for handling difficult and often sensitive owner disputes. Ron is a partner at Simpson Wigle and practises condominium, real estate law and alternative dispute resolution. At this evening seminar, practical tips and solutions will be reviewed on how to address the owner who refuses to comply with the rules of the Corporation. We will look at the Board of Directors’ obligation to enforce these rules and the many new legal remedies the *Condominium Act, 1998* offers Boards to achieve owner compliance.

Our local website is capable of providing link-ups to business members who wish to take advantage of this service. We also have great advertising opportunities for our business members in our Directory and Newsletter circulations.

For more information on how you can become a member of the CCI Windsor-Essex County Chapter or for the dates of our upcoming seminars, please call (519) 978-3237 or visit our website at www.cci.ca/Windsor

*Andrea M. Thielk, BA, LLB, JD, ACCI (Law)
President, CCI Windsor-Essex County Chapter*

Newfoundland & Labrador Chapter

At the National Conference in November, a member of our Board, Carol Adams, tended the CCI kiosk with activities information and brochures on our friendly and fun province! Her objective was to promote the Semi-Annual Conference scheduled for May 27th, 28th and 29th, 2004 here in Newfoundland and she was very successful. Carol continues to dedicate a considerable amount of time and energy to this project. She has established the social itinerary and invitations have been extended to all Chapters as well as the National Board. Thank you, Carol! We are delighted to be hosting this event, spending time with all visitors and “showing off” our beautiful province. For those of you who may be extending your visit additional tourist information will be provided to all registrants.

Our Legislative Committee continues to meet and deliberate on amendments to our *Condo Act*. All sections are under review and we anticipate presentation to our government by Spring 2005.

Mae Butt has been elected as our Privacy Officer. On the basis of the privacy policies established by CCI National, and adopted by our local board, Mae has taken the lead on the matter of PIPEDA by ensuring our members are fully informed of this legislation and the impact it has on CCI and its members. Thank you, Mae!

We anticipate an increase in our membership as the condominium real estate market continues to flourish here in Newfoundland.

Remember... mark your calendars and register for the Semi-Annual Conference May 27th, 28th and 29th 2004!!!

Darlene Rendell, CPM, ACCI

Secretary, CCI Newfoundland & Labrador Chapter

Regina & Area Chapter

An increased number of board members and committee volunteers has resulted in increased productivity by the four standing committees – membership, education, newsletter and legislation.

The goal of the membership committee has been to try to reach 100 this year. We are close to 90 now and have some more prospects. Chairperson, Ralph Latta has designed a new brochure. He and his committee continue to find ways to promote the Chapter.

Under the leadership of Gordon Giles, the education committee staged a successful seminar in January on reserve fund planning; the event drew more than 70 attendees. Seminars have been planned for March on accounting for condominiums; April on insurance for condominiums; and May on directors' liabilities. The February seminar on condo bylaws and corporate governance was “winter-stormed-out” on February 10th and is being rescheduled. Seemingly not over-taxed by all of those plans, Gordon and his committee have initiated plans not only for more seminars in the Fall but also for developing ACCI courses.

The newsletter committee prepared an 8-page newsletter in December in enough copies (2500) to distribute one to each unit owner in the corporation's membership as well as to the professional members. We were impressed with the cooperation from representatives of the many condo corporations who willingly made the effort to pick up packets and distribute the newsletters to unit owners. Advertising revenue (a new venture) is enabling us to produce a 12-page publication for the current Jan-Mar issue which, by the way, has the new name of “CondoVoice,” with the extension “for south Saskatchewan” to reflect our plans for changing the name and the mandate for the Chapter.

The legislation committee, alert to changes in the *Property Act* to be described in the forthcoming Regulations, has been busy as well continuing to plan strategy for addressing municipal governments about inequities in taxation of condominiums. We are grateful that Roy Nelson, although new to the Chapter, has assumed leadership of this committee.

Evelyn Jonescu, Newsletter Editor

CCI Regina & Area

Golden Horseshoe Chapter

In January, the Board met for an all day planning session. We have confirmed a number of educational programs, including our Level 100 course being held in Burlington and Kitchener this Spring and the Level 200 course scheduled in the Fall. We are also planning an evening seminar in June regarding the often misunderstood and maligned topic of condominium and unit insurance. Dates and venues can be found on our web site at www.gbccci.org.

Of particular note is a special event we are planning for next year. To be tied into our Level 100 course we are looking to conduct a mini-trade show and seminar series similar to what the chapter did in 2000. The Hamilton Convention Centre has been tentatively booked for April 16, 2005.

We have initiated correspondence with various Ontario government ministries regarding the property tax

inequities that exist.

This winter the chapter prepared an information pamphlet for the University of Guelph housing office specifically directed to students who are considering living in a condominium during their school terms. We are currently revising it to be of use for all areas of the chapter where there are post-secondary institutions. Along the same lines, the chapter is currently preparing a similar outline for new purchasers of condominiums.

I am very pleased to announce that Maria Finoro of M.F. Property Management has joined the Golden Horseshoe Chapter Board of Directors. Maria has been a long time supporter of CCI and has assisted in past years in the organization of our Guelph/Kitchener area courses.

*Kim Coulter, ACI, President
CCI Golden Horseshoe Chapter*

London & Area Chapter

I suspect that the largest challenge affecting us Londoners at this writing is "where shall we put all this snow?" We've had more than our share - somewhere between 70-90 cm (I lost track).

Our winter newsletter went out in December. We sincerely thank our writers who are always so amazing about contributing to this excellent resource for our members. It was very well received and we thank those of you who took the time to call and write to congratulate us on the content.

We are most fortunate in London to have an exemplary Board of Directors. Each of the members is most generous with their time and expertise and I take this opportunity to thank them sincerely.

Our members braved the snow, sleet and bad roads on January 27th to join us at our Seminar with Kathryn Munn, LL.B., Cert. ConRes., C. Med. whose presentation on mediation mastery was admirable. We learned much about the process. It certainly resulted in some lively discussion following the meeting. Our thanks to Kathryn!

Next on tap will be our Seminar "Ask the Expert - There are no stupid questions!" that will be held on Tuesday, March 30th, 2004. A panel of experts from accounting, contracting, engineering, insurance, law, property management and reserve fund planning will be on hand to

answer every burning question. Condominium communities are springing up throughout London and area. In an effort to introduce CCI to unit owners and directors of these new corporations and to the professionals and trades who service them, our members were given several passes to this Seminar. We recommend that interested parties RSVP by calling CCI-London & Area Chapter at (519) 453-0672 or email us at ccisw@cci-sw.on.ca. Please provide your name, condominium corporation number/company and a telephone number.

It seems odd to be thinking of spring while the snow piles grow and grow, but that is what we are doing - the spring newsletter is on the drawing board. And while spring is on our minds, even in this very small way, another fact of spring is CCI Membership Renewals. The plan is to have renewals go out in April and we hope all our current members will continue their membership and support of CCI. We also urge all members to share their knowledge about CCI with others.

We are always open to your suggestions and comments. For more information about CCI-London & Area Chapter, visit our website www.cci-sw.on.ca or call (519) 453-0672 and request an information package.

*Trish Kaplan, Administrator
CCI London & Area Chapter*

North Alberta Chapter

It is hard to believe that three months have already passed since the Conference in Toronto and since our last communication. It is also hard to believe that five months have passed since our Chapter's Annual General Meeting.

Our Chapter (Committee) has been busy ensuring that a Privacy Policy has been put in place and further, to ensure that our office has also taken the necessary steps to meet the requirements pursuant to the newest legislation concerning the privacy issues and am

pleased to report that all appears to be in order.

Unfortunately, Edmonton has experienced a few major fires recently, including a condominium and two businesses that put losses in the millions of dollars and will no doubt impact our industry.

We are continuing with our seminars/courses, and for the most part, have had successful attendances.

*Roxie Koch, President
CCI North Alberta Chapter*

Manitoba Chapter

Our Lunch and Learn series has met with approval of our members. Speakers have included Luc Seguin of CAN AM Building Envelope Specialists Inc. on attic condensation, buckling shingles, mould and mildew, ice damming and ventilation; Wendy Huggan, a facilitator for CHF (Canadian Housing Federation) and Manitoba Department of Justice Department for an overview of the *PIPEDA Act* and a look at its impact on condominium corporations; and Jamie Hopkins with Manitoba Hydro to provide a summary of the Power Smart program. Our members are enjoying both the networking opportunities and the speakers.

The first session of The Manitoba Condominium Course was held on January 24th. Sessions 2 and 3 are scheduled for February and March. Attendees were enthusi-

astic about the speakers and importance of the course contents.

Property taxes and insurance issues continue to be important. We are fortunate that the Mayor of Winnipeg is committed to property tax changes and we are supportive of his efforts. His "New Deal" is a work still in progress. The insurance committee is focusing on concerns that have been brought forward by members, mainly related to the handling of insurance claims. Resolution of the concerns is being sought through the participation of all parties, including, insurance companies, adjusters, condominium corporations, individual unit owners, property managers and lawyers.

*Edie Lipson, President
CCI Manitoba*

Toronto and Area Chapter

Congratulations are in order for several of CCI-Toronto's members on achievements and successes made since our last report. First, CCI-T Vice President and CCI-National Board Director, Janice Pynn, was awarded with her FCCI designation, signifying her extraordinary contributions made to the Institute. Algoma Condominium Corporation #13 was named as the first recipient of CCI-Toronto's Condominium Newsletter of the Year award. This award was presented at the Chapter's Annual General Meeting on November 27th, 2003 to ACC #13 directors Cathy McClelland and Todd Sterling.

The Toronto Chapter is pleased to welcome two new directors as a result of elections held at the Annual General Meeting on November 27th, 2003. Joining the Toronto Board are Tom Park, P. Eng., ACCI and Vic Persaud with Suncorp Valuations Inc. The Toronto Board welcomes Tom and Vic and looks forward to working with them.

It is with regret that the Board says farewell to two long standing members of the Board – Richard Pearlstein, former Chair of Education and Peter Harris, former Chapter Treasurer. The contributions of both Richard and Peter over the years have been invaluable and their

presence at Board meetings will certainly be missed.

CCI-Toronto's Special Projects committee has been actively following developments with the Ministry of Energy on the lifting of hydro rate caps due to take effect on April 1, 2004. In a recent special mailing to all members, the committee has outlined how this change will affect condominiums on bulk meters and what they need to do in order to qualify to have their usage calculated on a per unit basis.

The spring of 2004 is shaping up to be a busy season for CCI Toronto. The chapter will be once again have an exhibit booth at Springfest 2004 on March 31st and the Toronto Real Estate Board Trade Show on April 13th. The Basic Course was held on Wednesday evenings from February 18th to March 31st and registrations are now being accepted for the four night Advanced Course beginning April 14th. Finally, CCI-T's Education Committee is busy fine-tuning the Spring line up of seminars – further details are available on the CCI-T website at www.ccitoronto.org/Events.

*Lynn Morrovat, Administrator
CCI Toronto*

Atlantic Chapter

This is the last Chapter Chatter from the Atlantic Chapter. As a result of the inauguration of the Newfoundland Chapter and indications of interest that New Brunswick may be interested in establishing a chapter, the Board decided to change the Chapter's name to CCI Nova Scotia. By the time you read this, the name change will be official.

The Chapter is currently involved in a strategic initiatives process to promote CCI to the condominium community in Nova Scotia in the hopes of increasing our membership. As well, we are planning to solicit input

from our members regarding the issues that are important to them in order to develop a number of seminars that will meet certain of these issues

We presented the CM 100 course in mid-February and plan to provide the CM 200 in April. Several of the Board members are planning to attend the mid-year Board meetings in Newfoundland and look forward to the exchange of ideas that always marks these meetings.

*Anne Merry, President
Nova Scotia Chapter*

Huronia Chapter

We're in the thick of a new privacy front. With PIPEA in full swing, our members are now able to confirm and correct the personal data we hold on them. The biggest privacy controversy in our chapter, to date, is how to pronounce the acronym, with the "piePEE-da" advocates getting the most support while some stalwarts calling it "PIP-eh-dah." The National office made it easy for our chapter to implement a model Privacy Policy. Our membership files are secure and we appointed our first Privacy Officer. At our January Board meeting we did a PIP-eh-dah training session for our directors. We're piePEE-da ready but are aware that privacy is a work-in-progress.

What are we doing? Hopefully, the road we travel will interest you, but our success depends upon how well we answer three questions. What should we be doing? What should we be doing next? What should we not be doing? I invite you to let us know how you think we should answer these questions. We're in our third chapter-year with growth that exceeds most of our expectations. From zero to 260 members in three years is, we believe, a record to be proud of. To service our growing membership better, we had to obtain professional association management. We're proud to say that Safety Sign Design, a company, with offices in Innisfil, ON is giving us much needed administrative services.

Our Board committees are now operating with clearly defined functions. All directors now have the opportuni-

ty to play an active role in the affairs of CCI-Huronia. A great deal of our chapter's success depends upon the hard work of Mina Tessris and members of his Education Committee. On tap for six Tuesday Evenings is an extensive course for director-managers, starting March 30th, 2004, at the Barrie Legion Centre. Our education agenda also includes one-day seminars for Orillia, Collingwood, North Bay, Sudbury and Sault Ste Marie.

Our chapter is proud of Condo Forum, under the editorship of Howard Walker. It is the best way we have to communicate with our members. Our newsletter receives high marks from many of its readers. June Kingshott, wrote: "Every article is interesting and informative. I read it from cover to cover even tho' I am taking a sabbatical from the Board of Directors of Muskoka Condominium Corporation No 37." We are also proud to let you know that two of our Chapter Board members, Gerrit Roosenboom and Michele Farley, also sit on the Board of CCI-National.

If you have, any questions or comments about the work of our chapter send them to:
zwicker@zwickerevanslewis.com

*Milton W. Zwicker, President
Huronia Chapter*

Vancouver Chapter

Our sub-committees continue to actively work on membership growth, the creation of a website, finalizing our education materials and promoting our Chapter and the CCI organization to condominium owners and businesses that support and serve the condominium industry. PIPE-DA, insurance coverage and availability and building security are three topics on the agenda for our upcoming seminars. Once the education materials are completed,

we will also be holding the first one of many CM 100 courses for owners and businesses alike. Our Chapter continues to grow and we are excited about the prospects of continued growth and development of our Chapter in 2004.

*Jamie Bleay, President
CCI Vancouver*

Condo Cases across Canada



I have been asked, and it is my pleasure, to provide these brief summaries of recent court decisions across Canada, respecting condominium matters. 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.

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

THE HOT TOPIC – WHEN IS MEDIATION AND ARBITRATION MANDATORY (IN ONTARIO)?

Cases From Ontario

McKinstry v. York Condominium Corporation No. 472 (Dec. 8, 2003)

Mandatory mediation and arbitration (in Ontario) does not apply to oppression applications.

Former owners asserted claims against the condominium corporation for the corporation's refusal to approve certain renovations to the unit. The corporation's rules required written consent of the Board for such renovations. The former owners asserted that these rules had been ignored and, accordingly, should not apply. They also asserted that "informal" consent had been provided by an officer of the corporation. Alternatively, they asserted that the corporation's refusal to provide consent was oppressive in that it was unfairly prejudicial to them or unfairly disregarded their interests.

The former owners alleged that they had suffered damages, primarily in the form of reduced value of their unit (which they had sold).

The corporation raised a preliminary issue: Since the claims included a disagreement with respect to the rules, did mandatory

mediation and arbitration apply pursuant to Section 132 of the *Condominium Act*, 1998?

The court's answer was "no". The court's reasons were as follows:

- The oppression remedy is contained in Section 135 of the *Act*. That section makes no reference to mediation or arbitration (as does Section 134 of the *Act*, which deals generally with enforcement).
- An oppression application can include complaints about "a broad pattern of conduct, only a part of which" may fall within Section 132 of the *Act*. "Making one part of such a broad application subject to mediation and arbitration would result in multiple proceedings."
- Oppression applications can be brought with respect to threatened conduct. "Such an application must be brought with dispatch... The time required to schedule and proceed with mediation and arbitration are not compatible with the dispatch that many Section 135 applications would require."

[Note: In its reasons, the court also noted that mandatory mediation and arbitration does not apply to disagreements with respect to the *Act*. We saw this previously

in *Carleton Condominium Corporation No. 291 v. Weeks* (see *Condo Cases Across Canada – Issue No. 4*)]

The court accordingly proceeded to decide the claims. The court dismissed the claims, and gave the following reasons:

- No informal consent to the renovations had been provided.
- The corporation's rule was proper and the Board had genuine reasons for refusing its consent.
- There was no unfairness and accordingly no oppression.
- The claimants had no proper reason to believe that the rule would not be enforced.



Other Ontario cases

Metropolitan-Toronto Condominium Corporation No. 1101 v. Ontario New Home Warranty Program (December 17, 2003) (Divisional Court)

Releases given to builder may protect warranty program.

The corporation had arrived at a settlement - and signed releases - with the builder. The corporation asserted, however, that the releases did not affect the corporation's rights as against the Ontario New Home Warranty Program. The corporation relied upon the decision of the Ontario Court of Appeal in the case of *Mandos v. Ontario New Home Warranty Program*.

The court ruled that the releases did apply to the corporation's claims against the Ontario New Home Warranty Program. The court said that the reasoning in the *Mandos* case did not apply where:

- The defects were known at the time of the release;
- The claimant received compensation related to the defects;
- The claimant understood the release. (The court noted that the corporation was assisted by legal counsel during the drafting of the release.)

Skyline Executive Properties Inc. v. Metropolitan-Toronto Condominium Corporation No. 1385 (December 12, 2003) (Ontario Court of Appeal)

This was an appeal from the lower Court's decision to appoint an administrator. (See *Condo Cases Across Canada – Issue No. 1*.)

The appeal was dismissed, in part.

The Ontario Court of Appeal found that there was evidence to justify the lower Court's decision to appoint an administrator. However, the Court of Appeal did alter the order with respect to costs. The court said that an award of costs on a substantial indemnity basis (ie. essentially 100% recovery of costs) was not justified because there was no wrongdoing on the part of the respondents of the sort

required to justify a cost award on that higher scale. The Court of Appeal said that costs should be awarded only on the normal, partial indemnity, basis.

Quebec case goes to the Supreme Court of Canada

Our readers will know that very few condominium cases ever arrive at the Supreme Court of Canada. However, later this year the Supreme Court of Canada will provide one of its rare decisions in condominium law. The Supreme Court heard the matter on January 19, 2004, and its decision is expected in the next few months.

The case involves a luxury Montreal condominium and the question is whether or not Orthodox Jews who live in the condominium have the right to install huts on their balconies – called *sukkahs* – for about a week each year, to celebrate a fall religious festival.

The Court is essentially being asked to draw a balance between individual human rights and the rights of the condominium community as a whole.

This will be a landmark decision in Canadian condominium law. We will report the result, when it is available, in an upcoming issue of *Condo Cases Across Canada*.

Newfoundland and Labrador case

Summerville Condominium Corporation v. Dynamic Physiotherapy (December 19, 2003)

Sign not permitted.

One of the commercial units in the condominium was sold. The sale agreement included a term that the purchaser would be permitted to install a sign on the common elements.

Under the corporation's governing documents, the corporation's consent was required to the sale, and also to the sign.

The corporation gave its consent to the sale. However, the court said that the corporation had not given its consent to the sign (and the Board's consent to the sale

did not impliedly include consent to the sign). The purchaser was required to remove the sign.

The Court also said that, under the terms of Section 12(4)(b) of the *Condominium Act*, the corporation was entitled to recover all of its reasonable legal expenses.

Alberta Cases

Condominium Corporation. No. 7921945 v. Cochrane (January 12, 2004)

Defendant did not cause fire.

A condominium townhouse unit was damaged by fire. The damage was covered by property insurers of the corporation and the unit owner. The insurers then brought this claim under their rights of subrogation.

The Court found that the likely cause of the fire was a cigarette left in the rear yard. The defendant (the boyfriend of the unit owner) had disposed of a cigarette in the rear yard. The unit owner's son had disposed of a separate cigarette in the rear yard.

The Court found that the defendant was not an un-named insured under the insurance policy. Therefore, the insurer could assert the subrogated claim against the defendant. [The Court noted that an insurer cannot subrogate against its own insured.] However, the Court concluded that the defendant's cigarette did not cause the fire. The Court concluded that the fire was caused by the other cigarette.

Pointe of View Marketing & Management Inc. v. Condominium Corporation No. 011 1661 (November 6, 2003)

Condominium by-law oppressive and unenforceable.

West Point Plaza is a mixed/used high-rise condominium in Calgary. There are several commercial units on the main floor, which are accessed from the outside of the building. The second floor consists of a recreational area accessible only to owners, a foyer and one commercial unit. All units on the floors above are residential units.

The residential owners were concerned about security in relation to visitors to the second-floor commercial unit (i.e., clients of that business). Therefore, the corporation enacted by-laws which placed restrictions upon the access by the business clients. The Court ruled that the bylaw was oppressive and prejudicial to the commercial owner's interests. The Court ordered the condominium corporation to afford the commercial owner and its visitors access in the same manner as the residential owners. In particular, the requirement that the commercial owner meet and escort its visitors to and from the front door was lifted.

British Columbia Cases

Strata Plan VR1008 v. Oldaker (January 19, 2004)

Vote of owners not required to authorize petition for sale of a strata lot under section 117 of the *Strata Property Act*.

The applicant owner was in arrears in payment of his strata fees. The strata corporation registered a lien and then brought a petition, under section 117 of the *Strata Property Act*, seeking an order for sale of the strata lot.

The applicant asserted that the strata corporation was required to obtain a vote under section 171 of the *Strata Property*

Act before proceeding with the petition. The Court disagreed. The Court said that the requirement for a vote does not apply to the lien collection procedure, including a petition for sale under section 117.

Nevertheless, the Court was not prepared to immediately grant the petition. The Court was not satisfied, on the evidence, as to the proper amount of the lien. The Court said that if the parties could not agree on the amount, the Court could be asked to determine the amount and then to grant the order for sale.

Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259 (November 24, 2003)

Change to allocation of common expenses.

The Strata Corporation contained 265 Strata lots, namely, 190 retail and office units, 73 parking units, and 2 units devoted to signage.

Until 2002, the strata fees were allocated as follows. They were first divided between the different "sections" or types of units, and then were shared within each section based upon the unit shares. In 2002, this budgeting arrangement was changed. In particular, the strata council concluded that it was not appropriate to divide the expenses between the different

sections, since all types of units benefited – to one degree or another – from all of the different expenditures. Therefore, the strata council decided that all of the expenses would be shared by all units in accordance with their strata lot shares.

This change was passed by a majority vote at the Annual General Meeting. It was not passed unanimously.

Certain owners then challenged the change.

The Court said that this change was consistent with the *Strata Property Act* and the by-laws of the strata corporation. Although not all strata lots would benefit equally from a given expenditure, all the strata lots did benefit to a certain extent and the extent of the benefit was not considered "determinative". The Court did not feel that the change "was significantly unfair". In order for the Court to make such a finding, the actions complained of would have to be said to be "oppressive", or "harsh", or "wrongful" or "lacking in probity or fair dealing", or "done in bad faith" or "conduct which is unjust or inequitable". The Court said: "The fact that some other method, based on a good faith rational, may have been used to attempt to define with greater precision the degree to which a particular unit benefits from an expense does not amount to conduct which is 'significantly unfair'".

Mark your Calendars Now!

CCI Semi-Annual Conference
May 26-29, 2004
St. John's, NF

Hotel

Delta St. John's Hotel and Conference Centre
120 New Gower Street, St. John's, NF
Tel: (709) 739-6404

[Be sure to say you are with the CCI Conference]

Preliminary Program

Thursday, May 27th

- Board and Committee meetings
- The Newfoundland Soiree at Clovelly Resort

Friday, May 28th

- Morning: National Chapter Clinic
- Afternoon/Evening – Boat Tour on Witless Bay and Lobster Dinner

Saturday, May 29th

- Seminar
- Evening: Quidi Vidi Brewery followed by Dinner at The Stage Head with 'Screech-in Ceremony'!

Saturday, May 29th

- Seminar
 - **Panel** – to present legal cases from across Canada to provide summaries of recent court decisions across Canada with respect to condominium matters
 - **Engineering** – presentation on building structures, problems and remedies

Watch for more details on the CCI website: www.cci-ca/Events