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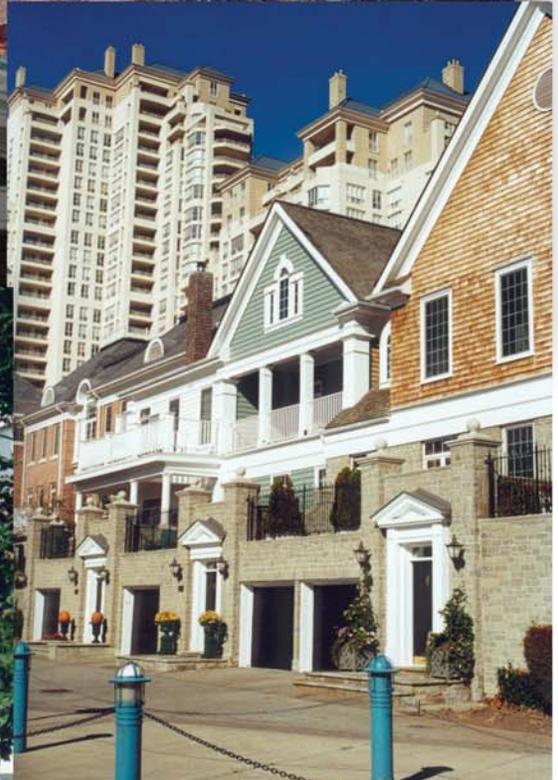
THE VOICE OF CONDOMINIUM

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

National Edition Summer 2004

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CCI is on the Leading Edge of the Residential Condominium Field



Gerrit Roosenboom
CCI National President

As I take over the role of president of the National Board of the Canadian Condominium Institute, I am somewhat cowed by the successes of those that have served before me. They have left very big shoes to fill. Deborah Howes, Ron Danks and Pat Cassidy are but the latest three of those who have created an organization that has become the virtual lifeline of many condo corporations and support organizations. They have been in the forefront of establishing the standards, policies and ideals that keep our organization true to its mandate of providing information, education and knowledge to our members.

The volunteer efforts of the Board of Directors of the Canadian Condominium Institute create the tremendous value that keeps us at the leading edge of the residential condominium field. Over twenty-five years ago, a few recognized that this new style of home ownership needed guidance to promote a harmonious lifestyle and to protect the investment of owners. With the recent creation of the Newfoundland Chapter, we have board members representing chapters from sea to sea. But even with 15 chapters, some communities still do not have access to the information and knowledge that is a fundamental necessity for a strong and healthy condo corporation. Organizational efforts continue in New Brunswick, Quebec and other communities.

Every Director on our National Board serves on a committee that works on creating ideas, policies and guidance on issues relating to condo/strata corporations. We have a committee of past executives that keeps an eye on our own gover-

nance and evaluates its relevance and effectiveness in meeting our mandate. Another committee is working with the Insurance Bureau of Canada to establish a Risk Management Protocol to reduce accidents and claims. Their goal is to control premium increases and to avoid total loss of coverage. Others work with Canada Mortgage and Housing and the Canadian Building Code. We have a Membership Committee to increase our numbers, a Planning Committee to work on future convention locations and new chapter creation, and an Education Committee to review educational techniques and standards.

It is important to repeat that our mandate is to provide our members with information and knowledge. We do this through our national and local chapter magazines, by presenting seminars in your communities, and through national conventions. Our mandate also entails representing the interests of our members at various governmental levels and being a resource for information. However, to fill our mandate more effectively, we need your help. We need to hear from you. Tell us your concerns, problems and ideas. Tell us how we can better serve your needs. Comment on CCI web sites, magazines, newsletters and quality of seminars.

I am thankful for the confidence bestowed on me by my fellow directors, in allowing me to fill the role of President. Ron Danks will now step aside from the executive but I am sure will remain a guiding light in the background. I have enjoyed and appreciated his advice and friendship. Deborah Howes was my mentor during this last year and a half. I will need her guidance in the coming months. With Peter Leong as Vice President, Peter Harris as our Treasurer and John Peart as our Secretary, we have a strong team to face the challenges ahead.

CCI SEMI-ANNUAL CONFERENCE

IN ST. JOHN'S, NEWFOUNDLAND • MAY 26-29, 2004

The National Board Gets 'Screeched In'

Back: Michele Farley, Peter Leong, Jamie Bleay, Ron Danks, Pat Cassidy, Rob Giesbrecht, Janice Pynn, Ambrose Reschny
Front: Patsy Ernst, Deborah Howes, Charlie Oliver, Evelyn Thompson, Ray Wilson



CCI-NL Hosts – Charlie Oliver, CCI-NL President, and Carol Adams [NS Social Convenor Extraordinaire!]



Deborah Howes, CCI National Chair, Addressing the Seminar Delegates



NL Registration Volunteers – Darlene Rendell and Carol Burke



Patsy Ernst, CCI National Director 'Kissing the Cod'



Guests enjoying the Screech-In: Ray and Zaida Wilson, Michele and Stephen Farley

A Risk Management Protocol was one of numerous items the CCI Board had at its Spring Meeting Agenda

On May 26th-29th, 2004, the Newfoundland Chapter of CCI was very successful in hosting the Semi-Annual Conference at the Delta Hotel in St. John's. In conjunction with this conference, CCI-National held its semi-annual National Board and Committee meetings.

It was wonderful to see so many visitors from across the country. In fact, the turnout made this Conference one of the most successful in terms of attracting participants from other CCI chapters.

The highlights of the CCI-National and Committee meetings included:

- The Planning Committee has done a lot of work reviewing condominium insurance. The Risk Management Protocol is being finalized. The protocol will help in reducing claims and premiums and to avoid the cancellation of policies. The committee hopes to be able to offer the first several modules to the market place in the very near future. There have been inquiries from various parties regarding the use and adoption of the Protocol, as well as interest in having it included as part of the symposium scheduled for November, 2004.
- There has been some interest expressed from Fredericton and Moncton regarding the formation of a New Brunswick Chapter.
- CCI National passed a motion to re-name CCI – Atlantic to CCI – Nova Scotia Chapter and re-name CCI – Regina to CCI – South Saskatchewan chapter.
- The Education Committee continues their work on creating/modifying exams for the various professions under the ACCI designation. Barry Scott is currently putting together a symposium on Condominium Insurance to be delivered at the Annual Conference in Toronto this fall.
- The Communications Committee will be looking at increasing CCI's profile across the country and improving our National newsletter and press releases on a national basis. The Communications Committee is also looking to improve/modify our website.
- The Personal Information Protection and Electronic Document Act (PIPEDA) came into

force on January 1, 2004. The purpose of this act is to protect the collection, use and disclosure of personal information. CCI has drafted a policy adopted by all the chapters. A well attended 3-hour chapter clinic on this important topic was held on Friday morning in St. John's.

- The Symposium Task Force, chaired by Barry Scott, reported on its effort to sponsor original debate and research on condominium issues by holding periodic symposiums. This ambitious initiative is based on the premise that CCI, as an Institute, has a legitimate role in promoting research and debate in areas which might not otherwise attract the focused interest of academic and professional experts. The first Symposium is to deal with insurance issues and is to be held in November in Toronto, in conjunction with the Annual Meeting and the ACMO/CCI Conference. Barry and his Task Force have so far enlisted assistance from the Insurance Bureau of Canada and Professor Craig Brown of the University of Western Ontario Law School. There are still hurdles to be overcome, but the Task Force hopes to bring the concept into the reality of an important event in November.
- The next CCI Semi-Annual Conference will be hosted by the Huronia Chapter in Spring 2005. The Huronia chapter is situated in cot-

tage country in Southern Ontario and is expected to showcase some of the finest resort condominiums in the country.

- CCI continues to forge a close relationship with our sister organization in the U.S., called the Community Associations Institute (CAI). CAI was founded in 1973 as a multi-disciplinary non-profit alliance serving all stakeholders in community associations. CAI provides education and resources to America's 250,000 residential condominium, cooperative, and homeowner associations, and to the professionals and suppliers who serve them. CAI has more than 15,000 members in 55 chapters throughout the United States. We are working with CAI and looking at possibly holding a joint conference in Toronto in 2007.

The Newfoundland Chapter held its main seminar on Saturday and the topics included "Building Envelope – Basics, Problems and Mould" and a legal session on "Case Law across the Country" from some of the top condominium lawyers in Canada. Condominium owners in St. John's were provided a glimpse of what is happening in the rest of Canada and the interesting challenges they face in Newfoundland.

All in all, this year's semi-annual conference was a huge success. We would like to thank the Newfoundland chapter for all their dedication and hard work. It's a great start for a chapter that has only been in existence for 2 years. A special thanks goes to Charlie Oliver, Mae Butt, and Carol Adams. Congratulations on a job well done!

Peter Leong, CCI-N Vice President

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South Saskatchewan Chapter

Two more seminars were organized by the Chapter during the past quarter year. In March, Brian Drayton, chartered accountant with Meyers Norris Penny, spoke on accounting for condominiums. In April, Judy McCuskee, insurance broker with ISI Agencies, spoke on insurance for condominiums. Both presentations were well received with considerable audience participation. The Education Committee has planning well in hand for the AGM to be held in October. Guest speakers, Peter Leong, Vice President, CCI-National, and Madeleine Robertson, crown counsel, Saskatchewan Justice, will address reserve fund studies and the new provincial legislation. This year we will be introducing a new format to the annual meeting with our first annual trade show event.

More meetings have been held with CCI-North Saskatchewan Chapter in cooperatively planning our first CCI seminars.

Membership in the Chapter has continued to grow slowly. Our goal for the coming year is to get well over the 100 mark. Initiatives are being undertaken to reach out to interested stakeholders in other centres in the province.

Another 12-page issue of *CondoVoice* for South Saskatchewan was distributed to more than 2550 unit owners and more than 30 professional members. The newsletter is increasingly effective in encouraging interaction among unit owners and members of the Chapter board.

Two members of our board, Ambrose Reschny and Dennis Day, attended the CCI semi annual meetings in Newfoundland. We look forward to their reports at our wind-up barbecue in June at the home of President Ambrose and Mavis Reschny.

*Evelyn Jonescu, Newsletter editor
CCI South Saskatchewan*

Windsor-Essex County Chapter

Our seminars on insurance and owner obligations were a success. Hot topic seminars are being planned for the future, which include a favourite re-occurring seminar, Ask the Expert. Start preparing your questions now.

We are working with the London CCI Chapter to offer our members an opportunity to attend the Condominium Course in London this September. This 2-day course is a comprehensive program covering all major aspects of condominium living. It is a must-attend for all directors, owners, managers and anyone else interested in condominium living.

We are pleased to welcome Troy Humber of Halsall Associates Ltd. and Debbie Bechard of Larlyn Property Management to our Board of Directors this year.

Our Board of Directors would like to extend an invitation to condominium owners and directors to attend our monthly

board meetings. Your input would be invaluable to the operation of our Chapter. Please contact me for further information on how you might become more involved with our Chapter.

Our local website is also 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 to become more involved in our Chapter, 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*

South Alberta Chapter

Our Chapter has been extremely busy this past quarter. Attendance at the monthly luncheons/guest speakers has continued to increase. Several Hot Topic Seminars and the CM200 course were also very successful.

We welcome our new Administrator, Penny Burlington. Penny has already made a huge contribution to our Chapter with her expertise and her cheery personality. Unfortunately, we had two resignations from the Board, however, we welcome Bill Jeffray and Richard John to our team.

A huge thank you to the Newfoundland Chapter for hosting the Semi-Annual Conference for 2004. The hospitality and food were fantastic! The meetings and sessions were very informative. The information gained will be a huge help to our Chapter and the interaction with the other Chapters on the National level is invaluable.

*Evelyn Thompson, President
CCI South Alberta Chapter*

Newfoundland & Labrador Chapter

Hello Canada!!! We wanted to take this opportunity to thank each and every CCI member and their guests for joining us recently in St. John's for National's Semi-Annual Conference. As the local hosts, we couldn't have been more pleased with the exceptional turnout and with the warmth and enthusiasm everyone conveyed.

We were very happy with the overall success of the events. Unfortunately, our Boat Tour didn't go ahead but we hope that it will be incentive for you to come see us again. The weather is warming up and there are many more sites and activities to take in. Please know you are welcome any time!

A special thank you to Carol Adams for her amazing organizational skills and her love of our Province and all that it offers. Likewise, to Karen Hood for her talent and support in keeping everyone on track and handling all of the finances involved in our hosting duties. It was a wonder-

ful experience for our Board and everyone is grateful for the opportunity.

Next up for our Chapter will be holding our Annual General Meeting in the Fall in conjunction with another educational seminar. The support by our local members so far has been very encouraging and we hope to build on that enthusiasm. Now that the National Conference is behind us, our focus will be on local endeavours.

Our Legislative Subcommittee will also be heading back to its undertaking of revising our current condominium legislation. This project is generating a great deal of interest from our members and everyone is looking forward to the time when it will be completed. We wish our Committee well in this daunting effort and are encouraged by the strong commitment its members have to the project.

Mae Butt

Board Member, CCI Newfoundland & Labrador Chapter

Ottawa & Area Chapter

The Ottawa & Area Chapter held their Spring 2004 Directors' Course on April 24th and 25th. Once again this very popular course was sold out three weeks prior to start-up. We would like to offer a special thanks to our dedicated expert speakers who volunteer their time to provide key insights into the course material.

On April 15th just prior to our offering of the Spring Directors' Course, and as an added service to new Board members, the Chapter hosted an informal evening seminar to introduce new board members to some of the key issues that were to be discussed in detail at the weekend course.

Plans are just about complete for our fall lineup of seminars which will be getting underway in late September:

Tuesday, September 21st – Evening Seminar – Energy Audits for high-rise buildings. Registrants will find out more about how to reduce utility costs, assistance programs and energy management. Seminar leader: Jim Dahmer, Keller Engineering Associates.

Saturday, October 16th – Breakfast Seminar – Condominium Boards often face difficult challenges. Join an interactive discussion to find out how to deal with challenges as a Board member. Moderator: Naheed Bardai, Nelligan O'Brien Payne. Note: The seminar will be followed by the Annual General Meeting of the Ottawa Chapter.

Late October – Evening Seminar – Condominium Basics. This session will introduce Board Members to some of the key issues that will be discussed in detail at the Directors' Course,

Saturday & Sunday, November 13-14 – Two-day Directors' Course,

Membership in the Chapter is up and we look forward to our members continuing support!

We hope you all have a great summer.

Liz Dowd

Administrator, CCI Ottawa & Area Chapter

Northwestern Ontario Chapter

The Northwestern Ontario chapter has had a quiet year thus far. Over the summer we are planning to hold a couple of small seminars on insurance and on by-laws concerning insurance. (Insurance deductibles and standard unit by-laws). We will also be working on our website and should have it up and running by fall. We are cur-

rently looking for members to serve on committees and continue to look for new members. Our membership has been at the same level since we were certified.

Douglas Stean, President

CCI Northwestern Ontario

Golden Horseshoe Chapter

This past Spring, the chapter conducted its Level 100 introductory course in Burlington and Kitchener. At both venues the attendance was positive and the participation level among the attendees very encouraging. We also received a number of compliments on the course format now being presented in PowerPoint.

Still on the educational front, on June 17th we conducted an evening seminar at the Royal Botanical Gardens on insurance. This was directed to owners, tenants, boards of directors, real estate agents and property managers, and covered the wide and often misunderstood aspects of common element and unit insurance. Our thanks to our guest speakers for their assistance.

At the end of May, the undersigned and other CCI/GHC board colleagues were fortunate enough to attend the CCI conference in St. John's. By the number of out of province attendees that either came early or stayed after the conference to do sight seeing, it is clear Newfoundland is the place to visit. The possibilities of what to do were endless. The Newfoundland scenery is only surpassed by the hospitality of our hosts (code for we had a blast!). Congratulations to the Newfoundland/Labrador Chapter for putting on a tremendous conference.

We were pleased to have the CCI National Chair, Deborah

Howes, attend our annual start the summer BBQ/Board Meeting. The Board was very appreciative of Deb's attendance during her busy schedule and her outlining some of the National initiatives was helpful to us in dealing with our chapter planning.

In May, the chapter published a document focussing on the issue of condominiums and real estate transactions called, *Essential Issues for Realtors In The Condominium Act 1998*. This authoritative work was prepared by two of our chapter directors, Ron Danks and Craig Robson. Michael Clifton, an associate of Craig's also worked on the project. Congratulations! The book is available for purchase by contacting our office (905) 634-7367 or toll free 1-877-444-2496 or email@ghccci.org.

The chapter also published A Student's Guide to Condo Living, outlining some of the basic issues that students need to be aware of when living in a condo.

It is with regret that I announce that Janet Milne, a long serving Board member, tendered her resignation. As a member of her own condominium board of directors, Janet brought a unique perspective to the GHC Board.

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

London & Area Chapter

It is a pleasure to take this opportunity to thank all our members, Board of Directors, Seminar speakers, Condominium Course lecturers and newsletter writers for an excellent year of accomplishment.

Our "There Are No Stupid Questions!" was a resounding success. We had our largest turnout ever – 107 members and guests arrived to benefit from the expertise of our panel of condominium specialists.

Now I begin my second year as Administrator with pride and anticipation. Our membership renewals went out with our Spring issue of our CCI Review and the response is excellent. We thank you for your continued support. Congratulations to all the members who see the value of renewing their membership with CCI.

We invite you all to introduce your friends and colleagues to CCI. Education is the key to success in the condominium community.

Our Education Committee has been busy lining up speakers for our upcoming year of Seminars and lecturers for the Condominium Course that will take place over

two days, on October 16th and October 30th. We are most receptive to your suggestions.

Our first gathering will occur on September 28th for our Annual General Meeting. We invite you all to attend.

The Condominium Round Table, a group of directors from various condominium corporations, had a very productive year and will resume their meetings in September. The following are topics to be discussed: September 8th – Updating lobbies and recreational facilities; October 13th – Board Management versus Property Management Company; November 10th – Record keeping – how long do specific records need to be kept? Mark these dates on your calendars if the topics are of interest to you.

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

We wish you all an excellent and safe summer.

*Trish Kaplan, Administrator
CCI London & Area Chapter*

North Alberta Chapter

Well hats off to CCI Newfoundland & Labrador Chapter for hosting a very successful and enjoyable Spring Conference in May, 2004. If you haven't experienced the Newfoundlander hospitality – well then you just haven't been "screeched" so to speak. It was great and thank you to CCI-NL.

In March, 2004, City Council held a meeting at which a couple of our Chapter Board Members attended. The City was proposing a bylaw whereby the City would enter into an agreement with Epcor Water Services Inc. to transfer the funding from the tax levy to the water user/customer for the cost of the hydrant services (fire protection fee). City Council was proposing a flat charge regardless of the volume of water consumption to be processed on the

water utility bill. Their justification was that not all water customers were bearing the cost of this service, for example schools, hospitals, churches, community leagues, etc. This would also affect condominium owners/corporations. Fortunately, the proposal was rejected. You can read more information on this in our *In-site* magazine.

We are continuing to work in the areas of membership growth, as well as presenting the educational courses and events for our Members and/or the public.

*Roxie Koch, President
CCI North Alberta Chapter*

Toronto and Area Chapter

The CCI Toronto and Area Chapter hosted another 'Presidents' Club' seminar on April 20th, 2004. This sixth in a series of seminars continues to attract increasing numbers of Condo Directors seeking a forum to meet and share ideas. The topic that evening was "Roles, Relationships and Responsibilities – Creating Balance Between the Board and Management. Thanks go out to presenters John Oakes, Bill Thompson, Alan Rosenberg, Dugald McArthur and moderator, Bob Girard, for making this evening such a success! The second spring seminar originally scheduled for Tuesday May 11th unfortunately was postponed until the Fall of 2004. Further information on when "Condominium Registrations – Transition or Turnover" will be re-scheduled will be posted on the Chapter website soon. Presenters Gina Cody, Mark Freedman, Tasso Eracles and Patricia Conway plan to coach interested Directors from mostly newer condominiums on how to work with the Developer and Management

Team to ensure a smooth transition through the registration process.

The Education Committee is already looking ahead to finalize topics for the fall line up of seminars – stay tuned to our website at www.cci-toronto.org for details as they become available.

Encouraged by early results of the Ambassador Program membership drive, the CCI-T Membership Committee will continue working over the summer months to spread the word through various professionals on the benefits of CCI-T membership for their condominium corporation clients. For more information on this program or to find out how you can join as an Ambassador, contact the CCI-Toronto office at (416) 491-6216.

*Lynn Morrovat, Administrator
CCI Toronto*

Vancouver Chapter

Over the past several months we have focused our attention 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. Our membership has increased and we are hopeful that it will continue to do so as we partner with more and more members of the business community and attract new condominium owners and council members. Our website should be up and running shortly and we are organizing speakers and volunteers to assist with a fall session of our CM 100 course. We will also be holding a seminar/social event in the fall at which

time several members of the condominium legal community will talk about various legal issues affecting condominium ownership and provide an update of many of the legal cases that our Courts have ruled on over the past few years.

Our Chapter continues to grow and we are excited about the prospects of continued growth and development of our Chapter in 2004 and 2005.

*Jamie Bleay, President
CCI Vancouver*

Hurononia Chapter

Have you ever thought of building one of those tall towers that dot our landscapes—by yourself? How about the CN Tower? One person acting alone can't build that kind of tower. It takes a team to build a tower of that size. CCI-Hurononia is just finishing a successful third year, thanks to the dedicated teamwork of a great board of directors. How do towers, teamwork and CCI-Hurononia all fit together? To me, teamwork means building, maintaining and using the tower symbol to serve our members who are condo directors, professionals, property managers, owners and others who serve our condo communities. It means infusing and seeding our Chapter with the zest and enthusiasm of new volunteers. A big job—sort of like the CN Tower. However, it takes a team to do a big job, because Together Everyone Accomplishes More.

CCI-Hurononia welcomes three new members to its board of directors: Bob Skeaff, President of SCC#60 (Barrie); Jeff McQuarrie of Enerplan Building Consultants (Barrie) and Jason Cowan of Besse, Merrifield & Cowan LLP (Collingwood). We do take time to have fun lest you think everything we do is work. We will celebrate our third anniversary with an evening of fun on Saturday, August 28, 2004 aboard the Serendipity, a luxury two-decker motor-yacht. We will enjoy an evening of dining, music and dancing while cruising Barrie's Kempenfelt Bay.

I'm proud to announce that CCI-National has chosen our Chapter to be the host to the semiannual Spring 2005

conference. The National spotlight will shine on our chapter, so we will need all the help we can muster to show the many visitors, from across Canada, that our Chapter and Simcoe County is . . . well like a CN Tower.

Our team continues to provide educational programs, publications and information to meet our members' needs. Gerry Stone and Mina Tessaris deserve our gratitude for leading the effort to teach our one day condo workshop to an enthusiastic audience of owners and directors in Collingwood on Saturday, May 8th. A week later, Howard Walker, Michele Farley, Bob Skeaff, Bob Rymell, Gerrit Roosenboom and yours truly did a repeat of this program for owners, directors, managers and real estate agents at the Masonic Hall, Orillia. We were pleased to welcome a group of Orillia Real Estate Agents. CCI is an approved educational provider for agents to obtain their RECO course credits, so those who attended received one credit for every hour they were present.

We have a remarkable year ahead and need your help. If you have any suggestions for us to make the Spring 2005 conference a success, please write or email me with your comments, suggestions, or just to say hello. Plan now to join us at the Spring 2005 Conference, in beautiful Simcoe County, because Together Everyone Accomplishes More.

*Milton W. Zwicker, President
Hurononia Chapter*

Nova Scotia Chapter

This spring, CCI-Atlantic underwent a name change as a result of CCI-NF receiving their recognition as a Newfoundland Chapter last fall. CCI-Atlantic will now be known as CCI-NS.

The chapter conducted a CM 100 course in March with a lively group in attendance and is already planning courses and seminars for next year.

Currently, we are continuing to work on a strategic plan with a number of new initiatives being pursued. A meeting was held this spring with several of our board members and four local property managers. The focus of the lunch meeting was to determine how CCI could become more attractive to their existing corporations and as well new corporations. A survey was sent to all members requesting input on the content of seminars that are of particular interest to them. We are still hoping to receive more response from this attempt to assist us in planning

seminars for next year. In addition, the Chapter was successful in persuading the local newspaper to print an article regarding CCI in their condominium feature section. It is hoped that this will spark some interest in the condominium community.

Most recently the National CCI semi-annual conference was hosted by CCI-NFL in St. John's (May 27-May 29). Three members of our Board attended this meeting. We at CCI-NS would like to congratulate this new chapter for a terrific conference. The committee and Board meetings were very productive and the seminar presented by the local Chapter on building envelope and legal issues was most instructive. Despite the weather, everyone had an awesome time. Thanks again.

*Anne Merry, President
Nova Scotia Chapter*

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.

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THE HOT TOPIC – IMPORTANT VICTORY FOR ONTARIO CONDOMINIUM IN BUILDING DEFICIENCY CASE.

Cases From Ontario

Carleton Condominium Corporation No. 21 v. Minto Construction Ltd. (February 17, 2004) Ontario Court of Appeal

Important decision with respect to limitation periods and *res judicata*

On appeal, the decision of the trial judge was upheld in its entirety. The key elements of the trial Court decision were as follows:

- The condominium corporation had brought a previous Court action against the builder, in 1986. That action had been dismissed on consent. The builder argued that the condominium corporation could not assert a further action – in 1995 – because the claims were included (or should have been included) as part of the previous court action. The court denied this defence. The court found that the structural problems that were the subject of the 1995 action could not have been discovered by the condominium corporation through reasonable diligence, at the time of the 1986 action. Therefore, this defence (*res judicata*) could not succeed in this case.

- The court also said that the structural problems could not reasonably have been discovered prior to 1993. Therefore, the limitation

period for commencement of the action started to run in 1993, at the earliest. The Court claim was accordingly commenced before expiry of the limitation period.

- The court said that the builder was liable for breach of express warranty (based upon the specific warranty provision in the agreement of purchase and sale) as well as negligent construction.

- The court said that the condominium corporation's damages relating to re-cladding the building should be reduced by the amount that the corporation would in any event be required to set aside for re-cladding, based upon the fact that re-cladding the building would have been required, in the normal course, by 2004.

Cases From British Columbia

Strata Plan LMS597 v. Camsix Developments Ltd. (March 8, 2004) British Columbia Supreme Court

Court refuses to add party to leaky Condo Case

To secure an order adding a party to a court action, the plaintiff must demonstrate the following:

- (a) There is a degree of connection between the parties that relates to either the relief claimed or the subject-matter of the proceeding; and
- (b) It is just and convenient that the party be added.

In cases where there is an “accrued limitation defence”, the court must ask itself the following question: Would it nonetheless be just and convenient to add the party, even though by doing so the limitation defence is taken away?

In this case, the court found that “the issue of whether the applicable limitation period has expired is at best uncertain”. The Court was not able to determine the question on the available evidence. Therefore, the Court found that there was a potential limitation defence. The Court then found that it would not be just and convenient to add the proposed further defendant because there had been a significant, unexplained delay on the part of the plaintiff in bringing the application to add the party. Therefore, adding the proposed defendant would result in significant prejudice to that party.

Wilfert v. Ward (March 3, 2004) British Columbia Supreme Court

Sharing of repair costs only by specific type of strata lots not ordered in this case

On appeal, the decision of the trial judge was upheld in its entirety. The key elements of the trial Court decision were as follows:

In this case, the strata corporation contained two different types of strata lots: townhouse style strata lots and apartments style strata lots. The apartment building contained defects that resulted in water ingress. The remediation cost was estimated at 2.4 million dollars. The question was whether or not the owners of the townhouses style strata lots were obligated to contribute to this cost.

British Columbia's *Condominium Act* was replaced by the *Strata Property Act* on July 1, 2000. The *Condominium Act* contained provision for common expenses relating to a particular type of strata lot to be shared exclusively by the owners of that type of strata lot. Therefore, under the *Condominium Act* the costs to repair the apartment building would be shared only by the owners of the apartment style strata lots.

However, the Court said that the *Condominium Act* did not apply. The Court said that the timing was such that the allocation of the particular expense was to be determined under the *Strata Property Act*.

The *Strata Property Act* contains provision for **operating expenses** relating to specific types of strata lots to be shared only by the owners of those lots. However, this provision does not apply to **reserve fund expenses**. Reserve fund expenses can only be allocated to a subset of strata lots if the strata lots have been divided into sections for purposes of cost-sharing. The Court said that if the strata owners wished to have all expenses (including reserve fund expenses) apportioned by type, the solution was to establish separate sections, each with its own operating and contingency reserve funds. This had not been done in this case.

The Court found that the cost to repair the apartment building could not be considered an operating expense, because it was not a repeating, annual expense. The Court found that the apartment repair is a reserve fund expense, which must be shared by all strata lots, since no sections of strata lots had been established in this corporation.

Cases From Saskatchewan

Little v. Condominium Plan No. 82S15667 (February 13, 2004) Saskatchewan's Court of Queen's Bench

Estoppel certificate did not provide protection against cost of balcony repairs

The plaintiffs were the owners of separate units in the condominium. They had purchased their units in 1998. At the time, they had received estoppel certificates that included the following standard statement: Since the date of the "last financial statement, there has been no material adverse change in the assets or liabilities of the corporation".

Commencing in 1996, concerns had arisen over the integrity of the balconies. A 1997 report contained a number of recommendations directed at preventing damage. Some work was done in 1997 and 1998, but the problems were observed to be worsening. By April of 1999, it was determined that serious balcony repairs were required, at an estimated cost of \$250,000.

The Court compared the wording of estoppel certificates in Saskatchewan to status certificates in Ontario. The Court said that the "Ontario requirements are far more onerous than those required of the certificate under consideration in this case". In Ontario, the certificate must disclose any known circumstances that may result in a common expense increase. This requirement does not apply in Saskatchewan. The Court found that the condominium corporation did not have sufficient information, at the time the estoppel certificates were issued in 1998, to conclude that there had been a "material adverse change in its assets or liabilities". Therefore, the estoppel certificates were found to be accurate

at the time of issuance and the plaintiffs had no basis of claim.

Condominium Plan No. 91R052147 v. Page Credit Union (February 25, 2004) Saskatchewan's Court of Queen's Bench

Condominium liens in Saskatchewan do not have "super priority"

Section 63 of Saskatchewan's *Condominium Property Act* gives the Condominium Corporation a right to recover common expenses by way of lien against the unit. The lien does not take priority over previously registered encumbrances. The lien has its priority determined based upon order of registration.

Other Cases From Ontario

York Region Condominium Corporation No. 921 v. ATOP Communications Inc. (December 24, 2003) Ontario Superior Court of Justice

Pre-Incorporation agreements not binding on Condominium Corporations

The builder had entered into a "television service agreement" with ATOP Communications Inc. prior to creation of the condominiums. The applicant condominium corporations were not parties to the agreement. The Court found that the agreement was not binding upon the condominium corporations. The question was whether or not the condominium corporations had entered into fresh agreements with ATOP Communications Inc. following creation of the condominiums. The Court ordered a trial to determine this issue.

Editorial Note: Condominium corporations can be bound by agreements that "run with the land". This can include easement agreements, certain agreements with the municipality, and other agreements that properly "run with the land". The question of whether or not an agreement "runs with the land" can be a complex issue requiring careful review. See the important decision in *Amberwood Investments Ltd v. Durham Condominium Corporation No. 123*.

Corchis v. Essex Condominium Corp. No. 28 (September 5, 2003) Ontario Court of Appeal

Notice to owners not required in the case of a claim for contribution and indemnity

A condominium owner sued the condominium corporation over a leaking roof. The condominium corporation asserted a third party claim against the roofer, for contribution and indemnity. The trial judge held that the third party claim was a nullity because the condominium corporation had failed to give owners notice of the claim in accordance with Section 14 of the previous *Condominium Act*. [The current equivalent is Section 23 of the *Condominium Act, 1998*].

On appeal, the decision of the trial judge was reversed. The Ontario Court of Appeal said that the notice requirement does not apply to a claim for contribution or indemnity, because this is not a claim for recovery of damages within the meaning of the Act.

Carleton Condominium Corporation No. 555 v. Lagacé (April 13, 2004) Ontario Superior Court of Justice

Condominium Corporations must provide reasonable notice in order to recover costs from Landlords

In a case involving a “problem tenant”, the condominium corporation can recover costs from the owner/landlord provided the condominium corporation gives the owner reasonable notice of the complaints against the tenant, in order to afford the owner a reasonable opportunity to attempt to resolve the problems (for example, by arranging for termination of the tenancy).

[Editorial Note: It seems to me that the nature of the required notice to the owner will depend upon the circumstances of each case – the idea being that the owner should receive notice as “reasonably appropriate” in all of the circumstances.]

In this case, the Court ordered that the owner pay about one-half of the corporation’s total costs.

Cases From Newfoundland and Labrador

Kelly v. Reardon (February 4, 2004) Newfoundland and Labrador Provincial Court

Condominium owners cannot assert claims respecting the common elements.

The condominium corporation was required to repair rotten floor joists, at a cost of approximately \$40,000. The corporation decided not to assert a claim (against the developer) for recovery of this amount. The plaintiff, one of the owners, asserted a claim for recovery of the plaintiff’s share of the repair costs (\$2,315.54) – paid by the plaintiff to the condominium corporation.

The Court found that the owner did not have standing to assert the claim. Only the condominium corporation could assert such a claim, relating to the common elements.

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