



review

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Message from the President



Over the years, CCI National has worked hard to support its chapters and members across Canada. This year is no different than any other. In this issue of the newsletter, you will read more about our ongoing supportive efforts and endeavours.

At the end of May, we visited Barrie where CCI – Huronia hosted this year's mid-year CCI National meetings. CCI National was on hand to assist/support the Huronia chapter and their workshop on "Risk Management for Condominiums". In Spring 2006, our goal is to have our mid-year meetings, for the first time, in Montreal, Quebec. The Association des Syndicates de Copropriete du Quebec is hosting a conference to celebrate its 30th year. CCI National is working on forging closer ties with our Quebec counterparts. In fact, we may, some day, have a CCI chapter in Montreal! There is still a lot planning to do for Montreal in 2006 and we will keep you posted.

We are always looking for ways to increase our membership across the country. In the article on the mid-year meetings in Barrie, you will read about CCI's Ambassador Program. This new membership drive will help to attract new members and make CCI stronger than ever.

CCI National held its first symposium in Toronto on condominium insurance. This symposium was set out as a "think-tank" forum to promote research and debate on how insurance has impacted condominiums. It took many months of planning and we believe it was well worth the effort. We are intent on planning more of these symposiums on topics that are important to the condominium industry.

As reported in the last newsletter, CCI in partnership with Applied Risk Management Systems (ARMS) has been rolling out its new Risk Management Protocol for Condominiums Corporations across the country. Workshops have been held in Edmonton, Calgary and Barrie with excellent turnouts. We see this protocol will be a vital resource for condominiums in managing the risks in their complexes.

We are expanding our website to make it more user-friendly and interactive for our members and chapter executives. The use of the Internet is becoming a valuable resource for communicating to our members and creating more dialogue with those in the condominium industry.

CCI National has created Professional Development Guidelines for the "Associate of the Canadian Condominium Institute" (ACCI) designation. The ACCI designation is recognition of a professional's expertise and outstanding achievements in the condominium field. We are working to ensure that ACCI's are continuing with education and professional development as they service the condominium community.

Throughout the year, various individuals from CCI National Executive have visited a number of the local chapter boards to discuss ongoing issues and how National can best assist the chapters with their operations. There are still several chapters to visit as we travel from West to East. Our next stops will be in London, Hamilton, Windsor, Ottawa and Halifax. We look forward to meeting the members in these local chapters as we work towards maintaining strong chapters with a national link.

Peter Leong, P.Eng., ACCI, FCCI
CCI National President

MAY 2005 CCI National Mid Year Meeting – **Barrie, Ontario**

The CCI National Board held its mid year meetings from May 26 to May 28, 2005 in Barrie, Ontario as guests of the Huronia Chapter. There are not enough good things to be said about the hospitality and organization of CCI-Huronia. Congratulations to Milton Zwicker, CCI-Huronia President, Michele Farley CCI Huronia representative on National and their band of volunteers. It didn't hurt that we had sunshine through the entire period while rain and gray skies were everywhere else throughout the Province and beyond.

The CCI National meetings followed the very successful Symposium entitled "Insuring Condominiums – Current Issues" held in Toronto on May 25. Congratulations to Andrea Thielk, Don Peter, Barry Scott and their committee on this success.

At the National meetings, CCI Treasurer, Peter Harris, reported that finances were in good order and that the draft budget for 2005-2006 indicated the same for next year. The meeting was also advised that



Janice Pynn Discusses the Ambassador Program



Panelists for Huronia Chapter Workshop "Risk Management for Condominiums"



Michele Farley, Huronia Chapter Host and Deborah Howes, CCI-N Chair at the Pig Roast



Pete's Place with Music by Jack De Keyzer

initiatives were being taken to locate paid advertising for the National Newsletter in future. Committee reports indicated a wide range of issues had been dealt with over the year to date. Website upgrades were discussed and approved and the Board was brought up to date on the Risk Management Protocol.

The Huronia Chapter organized an evening dinner and boat cruise of Kempenfelt Bay, part of Lake Simcoe. The weather and scenery were perfect.

On Friday, May 27, Janice Pynn rolled out the new CCI Ambassador Program at the Chapter Clinic. The Ambassador Program was initiated several years ago by CCI Toronto as a very successful means of increasing membership for the Chapter. Toronto's success prompted adapting same to a country wide basis. The Program has been distributed to each Chapter in hard copy and is accessible electronically by Chapters as well. Thanks to CCI Toronto for the original idea, adapting the Program for National's use and for underwriting the initial cost of the materials.

Friday evening was a Pig Roast and concert at Pete's Place with the Juno award winning music of Jack De Keyzer – another event organized by the Huronia Chapter. The dinner was excellent and the evening was a good way to unwind from the day.

On Saturday, May 28, the Huronia Chapter presented a half day workshop entitled "Risk Management for Condominiums" chaired by Deborah Howes, CCI National Chair. Presenters were Tony Wadsworth, Barry Scott, Ron Blondeau and Charlie Oliver. It was an excellent summary of the current status of risk management in condominiums and the use of the Risk Management Protocol as a management tool to reduce risk.

Saturday evening was dinner and horse racing at Georgian Downs, again organized by CCI Huronia. No idea who, if anyone, was the big winner but a good time was had by all. Following Sunday brunch sponsored by CCI Huronia and its sponsors, the attendees left for their respective cities.

John D. Peart, B.Sc., LL.B., ACCI, FCCI
CCI National Vice President



Kempenfelt Bay CCI Boat Cruise



Jayne Harvey, Boat Cruise Entertainer (And Sister of Host Michele Farley!)



CCI Huronia Chapter Hosting CCI National & Chapter Board Members

Is your New Condominium Insured for its Replacement Cost?

A commonly misunderstood issue at the turnover meeting for a new condominium is whether an insurance appraisal is required. It is often assumed that a developer's construction cost is an accurate reflection of the Replacement Cost of the condominium and an insurance appraisal is not necessary. Insuring a condominium for its construction cost often results in an under-insured or over-insured condominium property. Identified below are a few reasons why the developer's construction costs may not be the same as the current Replacement Cost of the condominium:

1) The developer's construction cost may not include all the costs that are incurred to build the condominium or may be based on reduced costs due to efficiencies achieved by the developer.

The developer's construction costs may not include "soft costs" such as Architect Fees, Development Fees and General Contractor Fees. All of these items are costs that would be typically incurred if the condominium had to be rebuilt after a total loss. These costs may be minimal to a developer who is building multiple condominiums. As a result, the full amount of these costs may not be included in the developer's construction cost of the condominium.

A developer who is building multiple condominiums can also achieve efficiencies with regards to material and labour costs. For example, a developer who is building ten condominiums will have to purchase significantly more steel girders from their supplier than a developer who is constructing only one condominium. As a result, the supplier is more likely to offer a favorable purchase price to the developer that will have to purchase steel girders for ten condominiums. This cost saving in turn reduces the construction cost for the condominium. Insuring the condominium for the reduced construction cost may create a deficiency in funds if the under-insured condominium has to be rebuilt in a total loss situation. The unit owners could potentially be held



responsible for the difference in funds between the reduced construction cost and the actual Replacement Cost in a total loss situation.

2) The developer's construction cost of the condominium may be limited to the proposed cost at the beginning of the tendering process.

It is often the case that the construction cost for a condominium is determined and fixed during the tendering process for contractors. If this cost is utilized for placement of insurance it may result in an extremely inaccurate Replacement Cost since the time lag between the tendering process and completion of construction of the condominium can sometimes take as much as three to four years. Over that time period, the economy and material and labour costs could change significantly. Some examples of economic changes that would affect the cost of construction are changes in inflation and interest rates. Changes related to material costs include shortages and surpluses of material that can affect prices through the law of supply and demand. For example, shortages result in higher prices for material and surpluses result in lower prices for material. The supply of labour will affect construction costs for the condominium in much the same way as material. For example, a large supply of skilled labour results in lower labour costs and a small supply of skilled labour results in higher labour costs.

It should also be noted that changes in labour or material costs are not always a gradual process. It is not uncommon to see drastic changes in material costs over periods as short as one year. For example, the price of steel in the Canadian Marketplace

has risen 70% in the last year. Steel consists of approximately 10% of the total cost of steel frame condominiums. This may translate into a 7% increase in the Replacement Cost of the condominium in one year.

3) The developer's construction cost may include costs for non-insurable items.

The developer may incur various costs during construction that should not be considered for property insurance purposes, such as:

- "one-time" site clearing and preparation costs
- additional labour costs for overtime or bonuses
- interest accrued in financing arrangements during construction

These costs would not be applicable in a normal reconstruction scenario, since site preparation is a one time cost, normal labour markets are assumed and financing costs are not considered.

In the instances when the developer's cost is adopted and it includes these additional non-insurable items, the insured value will be overstated. This may result in higher premium payments.

In conclusion, construction costs provided by developers can be considerably different from the Replacement Cost of the condominium. In addition, many Canadian provinces have a specific reference in their Condominium Act making it mandatory to insure the condominium for its current Replacement Cost. The recommended way to determine the Replacement Cost is to engage a professional Appraisal Firm to complete an appraisal of the condominium. This will not only ensure accuracy, but will also transfer liability for the calculation of the Replacement Cost to the Appraisal Firm.

*Vic Persaud, B.A. (Hons.)
Suncorp Valuations Ltd.*

Condominium Governance

Save the Condominiums – and then the World

In the winter of 2004 I wrote an article for the National Newsletter on condominium governance. I would like to pursue that subject further, to the point of attempting to arrive at some broad principles which might guide us as we make specific decisions with respect to how condominiums are best governed. I present these thoughts, not as cast in stone, but very much as a work in process. They do represent where I have arrived at after many years of advising corporations.

I offer these thoughts as well as a challenge: for myself, for other professionals, for service providers, for directors and for owners; to settle on some principles that can be offered to condominium corporations to help avoid governance difficulties, or perhaps to be more accurate, to provide help in dealing with differences when they do arise.

It is an intriguing question to ask why are there so often so called “people problems” in condominium corporations. We have all heard of, or referred to, the proverbial “pets, parking and the pink door.” Why do such problems arise in a small group of people who own and live in similar homes, who all know each other (or know of each other) and who work within an established framework of rights and procedures to manage and govern a small communally owned housing project.

One of the things that I personally find fascinating with condominium issues is the extent to which they represent a microcosm of issues within society as a whole. If we cannot deal with decision making and management issues in such a small group of people, brought together by such a basic factor as their selection of housing, how can we possibly hope to run whole cities or countries. As melodramatic as that sounds, I do not think that it is an overstatement.

Although I have mulled these ideas around in my head for some time, they were coalesced by a holiday read of Gwynne Dyer’s *War: the new edition*, Random House Canada, which I would highly recommend, for many reasons having little to do with condominium governance. Mr. Dyer deals not so much with the history of war, as



with the reasons why humans have so often partaken in what is so obviously a horrific practice. If you can’t be persuaded to read the whole book, the last chapter entitled “The End of War”, in sixteen and one half pages, provides a very insightful and literate summary of the current status and prospects of the world community.

What struck home to me, in the condominium context (with apologies to Mr. Dyer for my summations of his thoughts), were the following observations:

- that democracies generally don’t go to war against each other;
- that historically, at the point in human development when large groups began to effectively compete with other large

groups, in self defence, we turned away from systems of participatory consensual tribal governance in favour of more efficient authoritarian systems of governance;

- that one main reason for that change was that the technology of 5000 B.C. did not allow for the ready exchange of information and thoughts among a large group;
- that we must now learn to make good decisions democratically and multilaterally, with the efficiency of authoritarianism combined with the participatory consensus of democracy;
- that one of the keys to doing so is the modern technology which now allows the wide communication of knowledge and ideas instantaneously;

- never has it been so important that the right decisions be made, and never before has it been possible that those decisions be made worldwide with something akin to the same participation which used to happen in small tribal groups.

Perhaps I spend too much of my professional life in too small an area, but it certainly occurred to me immediately that these principles applied to condominium governance as much as they do to world governance. In condominiums we have legal rules as established by legislation and condominium documents. Within those legal rules there are established the rights of individual owners (and mortgagees) and the rights of the group as a whole. Those rules also establish a political process which provides that some decisions are to be made by the democratic vote of the membership as a whole and some by the authority of the board through the votes of its individual directors.

I suspect that as professionals, we often focus on our particular areas of expertise, whether that be law, accounting, building sciences, property management or otherwise, rather than on the decision making process that must be carried out in the condominium community as a whole. Even when we do focus on process, we tend to still dwell on our areas of specific expertise, which in the case of lawyers, means the black and white rules set out in the applicable legislation and documents. What I would wish to arrive at are a set of principles which would promote a focus on process and the acceptance of decisions made through that process; recognizing the importance of not only making the right decision, but making it in such a manner that the process, in addition to the decision, is accepted and respected.

I suggest that the keys to this acceptance and respect are knowledge (or the obvious availability of knowledge), involvement (or the obvious availability of involvement) and openness, and that modern technology may well be the means of achieving these keys, while preserving an efficient decision making process. Based on those thoughts, I would suggest, once again as my work in progress, the following principles which work the goals of openness and

participation into my previous thoughts as to the appropriate priorities for a condominium board:

1. The primary goal of the condominium is to manage and maintain the property in accordance with accepted industry practice and to govern and operate the corporation in accordance with the governing legislation and its own declaration, by-laws and rules.

2. The corporation is to be fiscally managed responsibly, within the primary goal above.

3. Knowledge is a key. Whether wanted or not, directors and owners should be deluged with knowledge and the ready availability of knowledge, preferably in multiple formats.

4. Openness and participation is a key. Respecting and protecting information properly the property of individuals, the operation of the corporation and the decision making process should otherwise be biased towards being participatory, open and transparent to the greatest extent possible. There should be the strongest bias towards avoiding secrets.

5. Making the correct decision in a timely and efficient manner is also key. Decisions must be seen to recognize and respect an established process, the individual rights of owners and mortgagees and the rights of the group as a whole. Decisions must also be timely, as required by a given situation.

6. Directors should only direct. Even in small corporations, where full property management is not contracted for, there should be a separation between the roles of the directors and the roles of those who carry out the directors' decisions and do the day to day work of management.

7. The proper experts and professionals should be utilized when required. Remember that the management of the property and the operation of the corporation are being carried out in trust for both the current owners and mortgagees and the future owners and mortgagees.

If we accept these principles, some implications become immediately apparent.

Obviously, they would impact on the question often asked as to whether board meetings should be open. These principles would suggest that they almost always should be open, but not such that non-directors are allowed to disrupt or prolong the proceedings.

The use of the internet is an obvious connection. There are almost endless possibilities for making more information readily available and for permitting participation. The trick, of course, is preventing the process from becoming bogged down in e-mail wars and tactics of harassment. If we accept the principles; however, I would suggest that the answer lies in embracing and taming the technology beast, rather than attempting to shut it out completely.

Those, I know, are only two brief examples.

Applying these principles will also entail some degree of additional expense. It should be recognized that such additional expense is well spent and a small price to pay for a decision making process that deals with difficult issues in a manner that is respected by all, even when theirs is not the prevailing view on a given issue.

I welcome debate and feedback on my suggested principles, and I do recommend Mr. Dyer's book. He has convinced me that it is essential that we find an acceptable governance protocol that responds to problems with the efficiency and stability of close, authoritarian systems but which is open and participatory in its process. If we can do away with condo wars, perhaps there is hope with respect to the real version.

Barry R. Scott practices law in London, Ontario with the firm of Scott, Petrie, Brander, Walters & Wright LLP. He has served on both the local and National Boards of CCI, is a past President of the London Chapter and has been recognized as a Fellow of the Institute. His firm is a member of the Association of Condominium Managers of Ontario (ACMO). He has lectured and written on condominium matters on behalf of the Law Society of Upper Canada, the Ontario Bar Association, the Middlesex Law Association, CCI and ACMO.

CCI Insurance Symposium

On May 25th, 2005, the Canadian Condominium Institute hosted an Insurance Symposium in Toronto. The intention of the event was to promote research and debate on an issue important to the condominium community. It is also hoped that the format can be applied in the future to other equally important issues.

While much work remains to be done in compiling the results of the day, initial indications are that the format met with great success.

127 delegates registered for the Symposium, representing a broad spectrum of both the condominium community (especially condominium lawyers) and the insurance industry (companies, brokers and adjusters).

The day's proceedings commenced with an address by Professor Craig Brown, Associate Dean (Academic), Faculty of Law, University of Western Ontario, who reviewed, in wonderfully plain and understandable terms, the basic principles which underlie the contract for insurance coverage. The morning also included presentations by Rob Giesbrecht (a Winnipeg lawyer and long time CCI National Director) reviewing the legal framework, as established by legislation and condominium documentation across the country, and by Keith Edwards, a Toronto insurance adjuster and past president of the Canadian Independent Adjusters Association, reviewing current issues from the perspective of the insurance industry.

After a break for lunch, which included a short presentation by CCI National Director Charlie Oliver regarding the soon to be available Insurance Risk Management Protocol, the conference reconvened to hear individual presentations by condominium lawyers Pat Cassidy of Halifax, speaking on rising insurance premium rates; Gerry Hyman of Toronto speaking on insurance deductibles (Mr. Hyman also doubled as moderator for the day's events); Patrick Williams of Vancouver speaking on con-



Symposium Panel of Speakers (L to R): Gerry Hyman, Pat Cassidy, Barry Scott, Craig Robson, Rob Giesbrecht, Pat Williams, Jim Davidson.



Craig Brown

struction deficiencies and "leaky condo" litigation; Jim Davidson of Ottawa speaking on directors' and officers' liability issues; Craig Robson of Kitchener speaking in favour of the "bare bones" standard unit by-law; and Barry Scott of London speaking against the use of such by-laws.

The topic of insurance was chosen for this inaugural symposium for the reason that it involves many issues subject to debate (even among CCI professionals) and in the belief that dialogue between the insurance and condominium issues is very much needed. The presentations, and the day's proceedings, certainly bore out both of these perceptions.

Among the more significant issues arising were the following:



Keith Edwards

- It is apparent that the provisions with respect to insurance contained in the Acts of the twelve common law jurisdictions (nine provinces and three territories) are remarkably different in their provisions. There was debate as to both the desirability and practicality of bringing these provisions more into line, and the need for more agreement on the terminology to be used in statutes and contracts with respect to insurance coverage.

- The topic of greatest controversy was that of the so-called "bare bones" or "bare wall" standard unit by-law. Keith Edwards, on behalf of the insurance industry, argued strongly against the use of such by-laws. Condominium lawyer Craig Robson presented a paper strongly in favour of such

by-laws, while the writer, in presenting his paper, and Toronto lawyer Bob Gardner speaking from the floor, both argued against.

- Gerry Hyman's presentation made it apparent that there is also disagreement within both industries with respect to the use of deductibles, and especially with respect to the extent to which, under the Ontario Act, unit owners may be made responsible for deductibles. In this regard, as well, Mr. Edwards indicated the condominium industry's difficulty in assimilating and dealing with such complexity.

- Pat Cassidy presented a survey of rate increases ranging from 92% to 412% experienced by 14 condominium projects in St. John's, Newfoundland between 2000 and 2004. In feedback, both from the floor and subsequently, insurance industry representatives have pointed out that even after significant increases the average cost per unit, per year in 2004 for these projects was \$265.00. Rates obviously remain a matter of concern for many.

It is planned to compile a record of the day's proceedings which will be available, including copies of all presentations in narrative form. It is hoped that this record will be a useful resource and will assist in further efforts as the debates with respect to many of these issues proceed.

All those interested in obtaining a copy of the record of proceedings should contact the CCI office. It is contemplated that the materials will be available in printed or electronic format and that there will be a charge to cover CCI's costs.

*Barry R. Scott, LL.B., ACCI, FCCI,
Scott, Petrie, Brander, Walters & Wright LLP.*

Views of the authors expressed in any articles are not necessarily the view of the National Canadian Condominium Institute.

Exciting New Changes to the CCI National web site

At our recent semi-annual meetings in Barrie, the National Board approved changes to the CCI web site. As such, there will be several exciting changes to our site:



At our recent semi-annual meetings in Barrie, the National Board approved changes to the CCI web site. As a result, there will be several exciting changes to our site:

1. A discussion board has been created. This is accessible to everyone using this site. It enables you to create, enter or simply monitor discussion on condominium matters in Canada. We are hoping this will be a great help to all those in the condominium industry. To enter, access through the "Forum" icon. You will note this is searchable by subject. As we progress, we shall draw from this and compile the more frequent questions and answers in the format of an FAQ but this is down the road a little.

2. The site is being modified into differing sections. Here, the general public shall have access only to the main body of the site, however, a CCI member will have further access. We are loading past issues of the CCI Newsletter and, over the coming months, shall download legal cases that we have accessed. This will be a benefit for our CCI members which is not accessible to others. As time progresses, and in response to demonstrated demands, we can provide information here to our CCI members. For Chapter directors and committee members,

there will be a further level of passwords that will permit access to additional information to assist in 'being in the know' about activities of the National Board.

Passwords will be provided to chapters over the coming weeks for distribution to all paid up members of CCI. We shall activate the site changes by mid-June and hope to have all passwords out by July 1, 2005.

As we progress with the re-development of our site, it is our intent to make it a vehicle that enables more communication to CCI members, a source of data on condominiums in Canada and provide a place for dialogue on events in our industry.

Changes and comments respecting the site will be posted by our Communications Committee from time to time on the main web page. We shall endeavour to keep this as simple as we can while moving ahead with one of our goals...to continue strengthening our presence as "the voice of condominium".

Feel free to post comments or ask questions in the Forum.

*Charlie Oliver, B. Comm., CCIM
CCI National Director*

www.cci.ca



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, LL.B.
Nelligan O'Brien Payne, Ottawa

THE HOT TOPIC: BC CASE RESPECTING RESPONSIBILITIES OF CONDOMINIUM CORPORATIONS

Richardson v. Strata Plan LMS2435

Important case about the responsibilities of Condominium Corporations

In September of 2004, the Strata Council obtained a property inspection report from a qualified property inspector. The inspection report revealed a number of problems including envelope leaks and sewage pipe leaks. These problems apparently did not affect the residential Strata lots. These problems affected only the commercial Strata lots.

One of the commercial Strata lot owners fell into bankruptcy and the Strata Corporation ultimately sought to sell that Strata lot to recover considerable arrears in Strata fees. The mortgagees of that Strata lot asserted that the Strata Corporation had failed to take proper steps to address the problems noted in the inspection report. The mortgagees asserted that they would be badly prejudiced (by reduced sale value) in the event of a sale of the Strata lot in the face of those problems. The mortgagees accordingly petitioned for an order appointing an administrator of the Strata Corporation, for the purpose of hiring consultants to find the source of all building envelope leaks and sewage pipe leaks (affecting the particular Strata lot) and to hire contractors to effect the necessary repairs. They also sought an order that any required funds, for these pur-

poses, be raised by special assessment. The court held as follows:

- Generally, “the democratic government of the Strata community should not be overridden by the court except where absolutely necessary”.
- “I am disinclined to impose the expense of an administrator on the Strata Corporation for the limited purposes identified – namely to engage an expert consultant.
- A Strata Corporation is not an insurer of the property. Its obligation, through the Strata Council, is to do all that can reasonably be done to fulfill its statutory obligations.
- In this case, however, the Strata Corporation had not done all that could reasonably be done. Obtaining the inspection report “was an appropriate but not a sufficient response to the mortgagee’s complaints”. Once alerted to the problems identified in the inspection report, the Strata Corporation had a duty to do all that was reasonable to address them. In particular, “the next appropriate step was to obtain a professional assessment by recognized engineering experts, of the extent and costs of the necessary repairs and to effect any such repairs either from the contingency funds or by special assessment”.
- The Strata Council’s failure to take these

steps exposed the Strata community to potential litigation. For example, the mortgagees “are vulnerable to a loss” if the Strata lot is sold at a price reduced by the Strata Corporation’s failure to fulfill its duty.

- Therefore, the court made the following orders:
 - a) The mortgagees must pay the outstanding Strata fees into trust.
 - b) The Strata Corporation must engage an expert consultant to investigate the complaints and report on, and estimate the costs, of any necessary repairs. The costs of the consultant shall be paid out of the trust funds. If the parties cannot agree on the expert, either party may apply to the court for appointment of an administrator for the specific purpose of engaging the expert.
 - c) The application for appointment of an administrator is adjourned. Once the expert report is received, the Strata Corporation must take appropriate steps to meet its statutory duty to repair and maintain the common property. Failure to do so will provide a basis for the mortgagees to renew their application for the appointment of an administrator for that purpose.
 - d) If the mortgagees fail to pay the Strata fees as noted above, the Strata Corporation may renew its application for an order for sale of the Strata lot.

[*Editorial Note: In the editor's view, this decision nicely describes the obligations of condominium corporations and the risks of harm (for example, harm to mortgagees) in cases where condominium corporations fail to take reasonable steps to fulfill their obligations. The decision also highlights the importance of involving expert consultants in appropriate circumstances. Finally, the decision expresses the principle that appointment of an administrator is generally a last resort.]

Case from Ontario

MTCC No. 1385 v. Skyline Executive Properties Inc. (Ontario Court of Appeal) (April 28, 2005) Note: This is an appeal from the Decision cited in Part 8 of *Condo Cases Across Canada* (November 2004)

Key case related to corporation's right to recover costs under Section 134(5) of the Condominium Act

On appeal, the lower court decision was overturned in most respects.

According to the Court of Appeal, Section 134(5) of *Ontario's Condominium Act, 1998* allows condominium corporations to add to an owner's common expenses all costs incurred by the corporation in obtaining an award of damages or costs in an order made against the owner or an occupier of the unit. These costs can include:

- Actual legal costs owing by the condominium corporation to its lawyer, including costs going beyond any costs which the court may have ordered the owner to pay.
- All costs incurred in relation to an appeal in the matter.
- Any other costs – such as administration and managerial costs – incurred by the corporation in the matter, provided the condominium corporation can establish that those costs were incurred “in obtaining the Order”.

The Court of Appeal did say, however, that costs incurred to enforce the order must be distinguished from costs incurred to obtain the order. Costs incurred to enforce the order cannot be added to the owner's common expenses under Section 134(5) of the Act. However, such costs might be recoverable under Section 85 of the Act.

Bahadour v. York Condominium Corporation No. 82 et al (Ontario Superior Court of Justice) (February 11, 2005)

Court approves reports of condominium administrator

An administrator was appointed, under Section 131(1) of the *Condominium Act, 1998*, to carry out various tasks on behalf of the condominium corporation. Those tasks included a review of the physical condition of the property and, if deemed appropriate, levy of a special assessment and/or delivery of a revised budget for the purpose of obtaining funds for proper operation of the condominium corporation and for the maintenance and repair of its property and assets.

The administrator determined that \$3,000,000 was required to fund the most urgently-needed repairs. The administrator levied a special assessment to recover this amount and also took steps to arrange borrowing of the amount (as an alternative), including arranging for the passing of the necessary borrowing by-law.

One of the owners objected to the steps taken by the administrator. However, the court confirmed that all of the steps taken by the administrator were completely appropriate. The owner also expressed a desire to see the entire condominium property sold to a developer. The court agreed that this sale alternative should be explored, and ordered the administrator to expeditiously examine the possibility of selling the entire property (in accordance with the procedures set out in Sections 124 and 125 of the *Condominium Act, 1998*).

215 Glenridge Avenue Limited Partnership v. Waddington (Ontario Superior Court of Justice) (February 18, 2005)

“No pets” provision in declaration held unenforceable

In this case, the court held that provisions akin to rules, contained in a condominium declaration, must comply with Section 58 of the *Condominium Act* (which governs rules). The court said: “If any part of a declaration conflicts with Subsection 58(1), it is void and unenforceable”. The court said that where, pursuant to clause 7(4)(b) of the *Condominium Act*, a declaration con-



tains conditions or restrictions with respect to the occupation and use of the units or common elements, those provisions cannot go beyond that which is permitted in Subsection 58(1).

The court held that the cats which were the subject-matter of the particular application did not “run afoul of clauses (a) or (b) of Subsection 58(1)”. The court said that, “it cannot be said that the presence of all pets inherently constitutes a breach of those clauses”. Therefore, the court held that the “no pets” provision in the declaration could not be applied to require removal of the cats.

[*Editorial Note: In the editor's view, this case is wrongly decided. There have been many previous decisions which have confirmed the distinction between “no pet” rules and “no pet” provisions in a condominium declaration. In the editor's view, provisions in a condominium declaration are not subject to Section 58 of the *Condominium Act*. In the editor's view, “no pet” provisions in a declaration are enforceable, subject only to compliance with human rights. There have been many previous decisions which have confirmed these principles.]

Other Cases from Ontario

York Region Condominium Corporation No. 890 v Toronto (City) (Ontario Superior Court of Justice) (February 8, 2005)

Condominium Corporation appeals issuance of building permit to neighbouring land owner

Under Ontario's *Building Code Act*, any person "who considers themselves aggrieved by an order or decision made by an inspector or chief building official" (including issuance of a building permit) "may appeal the order or decision to a judge of the Superior Court."

In this case, the condominium corporation appealed the decision of the chief building official to issue building permits to a neighbouring landowner, on the grounds that the permits should not have been issued without the benefit of site plan review. The neighbouring landowner argued that the condominium corporation did not have standing to bring the appeal. The court found that the condominium corporation did have standing to bring the appeal.

Rogers Cable Communications Inc. v. Carleton Condominium Corporation No. 53 (Ontario Superior Court of Justice) (March 7, 2005)

Agreement between Condominium Corporation and Rogers not binding

The condominium corporation had entered into a bulk service agreement with Bell ExpressVu Limited Partnership ("Bell"). Rogers Cable Communications Inc. ("Rogers") sought an injunction to prevent the condominium corporation from entering into the bulk service agreement with Bell.

Rogers asserted that it had entered into a previous binding agreement with the condominium corporation (earlier in 2004) which agreement prohibited the condominium corporation from entering into any such bulk service agreements.

The court found that there was no binding agreement between Rogers and the condominium corporation. The agreement in question had been signed by a single member of the board of directors, without authorization by resolution of the board.



The Court said: "The evidence before me would indicate that the agreement between CCC No. 53 and the Plaintiff was signed by a single member of the board of directors thinking that this agreement was simply a continuation of an earlier (simple access) agreement when in fact he was granting an agreement in perpetuity to (Rogers) that the Defendant, CCC No. 53 would not enter into any bulk service agreement with any cable service provider."

The court noted that the "indoor management rule" has no application to condominium corporations. A single member of the board of directors cannot bind the condominium corporation. Decisions of the board must be taken by resolution at a properly-constituted meeting of the board.

The *Condominium Act* is consumer protection legislation, the purpose of which is to protect condominium owners. The condominium owners were entitled to the protections afforded by the requirement for a Board resolution. The court said that Rogers should have "made sure their con-

tract received the approval of the board of directors if they wanted a binding agreement".

Other Cases from British Columbia

Sunray Advanced Hotel Management Inc. v. Strata Corp. BCS226 (British Columbia Supreme Court) (March 23, 2005)

The Plaintiff, a management firm, sued for damages for breach of the management agreement (for alleged improper, unilateral termination of the agreement). The defendant, Strata Corporation alleged that it had cause to terminate the agreement.

The Strata Corporation made application for dismissal of the claim on procedural grounds. That application was dismissed. The Strata Corporation also made application for an order requiring that the plaintiff post security for costs. That application was granted. The Court was not satisfied that the plaintiff had sufficient assets to satisfy any award of costs, and therefore made the order for security for costs.



Vancouver Chapter

At the time this update is being written, the membership renewals for 2005/2006 are starting to come in. We are putting the finishing touches to what we hope is a new and improved newsletter which should hit the “newsstands” shortly. We are adding to our “gripe” list of things to talk about when we ultimately meet with the Financial and Corporate Sector Policy Branch of the Provincial Government. However, with a Provincial election just days away, we hope that our plans for a fall meeting will not be derailed.

Our chapter continues to work on increasing membership numbers, increasing our advertising revenue and developing new and hopefully interesting ways of informing and educating our members on what’s new, what’s important and what’s exciting on the condominium scene. Our chapter is working on an initiative to try to market and teach our condominium course online or through our website which hopefully will be fully operational by the time our next National newsletter goes to print.

Jamie Bleay, LL.B, President

Golden Horseshoe Chapter

On April 23rd, the Chapter conducted its Level 100 half day directors course in Burlington and Cambridge. Both courses were well attended with 52 and 35 registrants respectively. Our guest speakers and chapter board members always provide some key insights into the various topics being covered. At both venues, the attendees participated in an extended question and answer period. We are always grateful to our guest speakers for their assistance.

At the May CCI Conference in Barrie, the chapter announced another in a series of information sheets; *A Tenant’s Guide to Condominium Living*. Another major publication the chapter launched was *A Planner’s and Municipality’s Guide to the Ontario Condominium Act 1998*.

On June 23rd, the chapter hosted an evening Case Law Seminar at the Royal Botanical Gardens. Along with chapter directors Ron Danks and Craig Robson, we were very pleased to have Richard Elia and Gerry Hyman provide some interesting and often humorous aspects of condominium law.

We are very excited to announce that for this year’s CCI/GHC Annual General Meeting, the chapter will be hosting a dinner cruise of Hamilton Harbour. The date is September 15, 2005 with boarding at 6:30 pm. While there will be a nominal fee for the event, we have already received sponsorship commitments to keep the fee very reasonable. Our web site www.ghccci.org has all the details. The next issue of the chapter magazine will also detail the event.

Membership in the chapter is at a record level; 567 members.

Planning will be commencing very shortly for a one day condominium conference and trade show booked for April 2006 at the Hamilton Convention Centre.

Kim Coulter, B.Tech (Arch., SC), ACCI, President

Windsor-Essex County Chapter

It was a packed room. Many came from various industries and condominiums to listen to the latest news affecting risk management for condominiums. Lawyer Ronald Danks spoke to this attentive crowd appealing to them with real-life cases of how judges determine liability in personal injury cases. The case law showed how effective risk management can limit or reduce liability to compensate an injured party. Practical management tools and tips were reviewed by Mr. Danks.

In light of the importance of risk management, we are pleased to launch our initiative to respond to the serious concerns facing condominiums in the increasing costs of insurance coverage and the potential for insurance cancellation. Our Chapter and Mr. Danks also introduced the CCI Risk Management Protocol Program, which provides condominiums with the instruction and tools they need to mitigate the risks faced across the full scope of their condominium operations. For more information on the Risk Management Protocol Program, please contact (519) 978-3237.

We are pleased to welcome all of our new members to our Chapter. We are also very pleased to introduce our newest Board Members, Jennifer Gryn and Chris Baillargeon and welcome them to our Chapter.

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

Our 2005 membership drive is on. Chapter membership is on the rise consistent with the increase of condominium developments in the area. 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, LL.B, JD, ACCI (Law), President

Nova Scotia Chapter

Since our last report, the Nova Scotia Chapter has held several educational events. In late January, the CM 100 course was offered and was well received by those who attended. A full day seminar on the topic of Insurance was offered in early March. Speakers included Gus Richardson, a solicitor with the firm Huestis Ritch; Lee Wilson, Donald Jacobi, Cindy Hallman and several other representatives of Fraser and Hoyt Insurance; Lisa Power, a property manager from City Group and long time member of CCI and Anne Merry, Chapter President. It was an information-packed seminar and participants were very pleased with the opportunity to discuss this topic in detail. A seminar on Effective Communication was our last educational offering for this fiscal year. It was also well received.

Anne Merry, President

London & Area Chapter

Our final Seminar of the 2004/2005 series took place on May 3rd. It was a resounding success. "There Are No Stupid Questions!" is a most popular venue for our members to have their diverse questions answered, and for introducing potential new members to the Canadian Condominium Institute. Representing the legal arena were Barry Scott, Jeffrey Phillips and Joe Hoffer; insurance was Sean Baker; and property management was Don Dickenson; and Connie Grant did her usual professional job of moderating. Thanks to them for their participation and enthusiasm. We also congratulate the members who came out to take advantage of the expertise of our panel, and those who introduced potential members to the education resources of CCI. We hope our guests recognize the benefits of a CCI membership.

The Condominium Round Table held its last get-together on May 11th. As usual it was well attended and lively. Meetings of the group will resume on September 14th when the discussion will be on "Water Waste Management".

The Education Committee is busy planning another excellent series of Seminars for next year. First up will be the "CCI Annual General Meeting and Special Presentation" on September 27th. Please mark your calendars now so you don't miss it.

Everyone is busy now – Annual General Meetings are going on throughout the city. We congratulate all the Directors for their contributions to their respective condominium Boards. Now is an opportune time to register new Directors for the upcoming 2-day Condominium Course scheduled to take place on Saturdays, October 15th and October 29th.

The annual membership renewals went out with the "Spring" newsletter and we appreciate all of you who are attending to them so efficiently. The months ahead will see a flurry of paper in my office, as I tend to processing the membership renewals, complete year-end reports, and prepare for 2005/2006. So, as the song goes, ... I'll be around ... for your suggestions and comments for upcoming newsletter articles and seminars, or discussion topics for the Condominium Round Table.

On behalf of the CCI Board of Directors, I wish you all a very healthy and productive summer, filled with sunshine and warmth, family and friends.

For further information about CCI-London & Area Chapter, call me at (519) 453-0672 or E-mail me at ccisw@ccci-sw.on.ca.

Trish Kaplan, Administrator

Toronto Chapter

The CCI Toronto and Area Chapter spent a busy spring hosting back to back sessions of the six night Basic Condominium Course and four night Advanced Condominium Course. These sessions continue to be popular with Condominium Directors looking to expand their knowledge on condominium matters. The new venue – the Novotel Toronto, conveniently located on the subway line helped to ensure sell out crowds for both courses.

CCI-Toronto's Special Projects Committee has also been busy over the last few months lobbying the City to reject the proposed Waste Levy Fee, whereby Multi Unit Residential Buildings, including condominiums would see the implementation of Garbage Levy fees of \$15 per tonne beginning September 2005. Despite CCI-T's efforts, combined with those of the Greater Toronto Apartment Association, City Council voted in favour of the fees. Other lobbying efforts the Chapter is currently working on include the issues of Hydro Security Deposits and a Tax Appeal on Guest Suite Units. Updates on both initiatives will be available shortly.

The Conference Committee is in full swing planning for the fall CCI/ACMO Conference, so mark your calendars now for November 4th and 5th, at the International Plaza hotel on Dixon Road in Toronto. Exhibit Booth space bookings are now being accepted – so book early for the best site location. Delegate registrations will start by late June.

Lynn Morrovat, Administrator

North Alberta Chapter

Here in the great Alberta North, spring is here (we believe) and everyone is coming out of hibernation on the hopes of a wonderful and long summer.

I have been involved with CCI for almost 6 years now and on the board of the Alberta North Chapter for 3 years. There has been little change in the board, however it is nice to see that the few new people that come aboard do come with new and exciting ideas.

For the last few years, increasing our membership has been something that we all agree needs to see happen. We struggle on how as it is not easy to reach the unknown out there who serve on Condominium Boards or even unit owners who seek education. The internet seems to be one way of reaching people, but other than that we have word of mouth from existing members and property managers. It seems that for such a wonderful and needed organization, we sure have a difficult time finding members.

We recently held the series of CM courses, with the CM300 ending recently. It was good to see such a good response to the courses, especially the CM300 course as I believe it shows the dedication of board members and managers in obtaining the knowledge in proper condominium management.

It seems that things are quiet here in the Alberta North Chapter, which is a good thing as it gives us time to work on how we can increase the membership until we break for the summer.

Murray Dadswell, President

South Saskatchewan Chapter

A major change for our Chapter occurred in the past weeks when we entered into an agreement to rent office space, and to hire a part-time office manager. Having an office not only increases our feeling of having an identity, but also enables us to gradually deposit files and other relevant material from the homes of various members of the executive. We look forward to making increased use of the space and to the luxury of having an office manager.

The amended Condominium Property Act and Regulations which came into effect in Saskatchewan on February 1, 2005 have generated activity for our Chapter with questions and concerns from members. A topic of great interest is the requirement for undertaking a reserve fund study. Plans for our Fall Conference (which will be held in September) include addressing the concerns for more information about how such studies might be conducted.

A special effort is being made by the Chapter to contact realtors and builders to encourage them to become more informed about the need to give realistic advice to prospective owners of newly built condominiums. Too often we learn of new owners who were disadvantaged financially when they found that the monthly condo fee they had been told to expect was in fact much too low. A first meeting with representative realtors and builders (in our new office) was a promising first step in this effort.

As the end of the current fiscal year approaches, we are endeavoring to increase our membership, and hoping to encourage more individuals to consider letting their names stand for election to our Board of Directors and to serve as Committee Volunteers. Plans are well under way for our major Fall Conference on September 17 with Tony Wadsworth as one of our keynote speakers.

Evelyn Jonsescu, President

Manitoba Chapter

As summer looms, CCI Manitoba is wrapping up a successful year. Our Spring Lunch and Learn sessions on Appealing your Realty Tax Assessment and Collecting Common Expense Arrears were topical and well-attended and we are excited about the sessions that are already planned for Fall. Before that, though, we are looking forward to our Annual Golf Tournament and AGM, planned for September 19, 2005.

Our Legislative Committee is actively engaged with government. A bill to amend The Condominium Act is expected to be passed this June. This bill will address a few specific issues, but a more comprehensive review of the Act is already under way and CCI Manitoba is an integral part of the process.

Three of our Board members attended the CCI Insurance Symposium in Toronto and two went on to Barrie for the National Board meetings and the CCI Huronia Conference. What a fabulous event! Hats off to Huronia!

Rob Giesbrecht, B.A., LL.B., ACCI, FCCI

Hurononia Chapter

We were the host and the National Directors were our guests. So we celebrated with them. We learned with them. We had fun with them. We hosted the Spring 05 meeting of the National Directors. As host, we have some great memories, I know our guests do too. During the celebrations with the National Directors, I thought about their dedication to the cause of building better condo communities. Imagine! All the directors live very busy professional lives, but they spent four days in Barrie—this is dedication. Again, imagine! Our directors come from Halifax and Vancouver and many places in between, so they spent another two days on the road. I admire their dedication, as I'm sure you do too. Their dedication gives us the confidence that CCI National and our Chapter have an exciting future. Talk about excitement. Let me share with you some of the Barrie highlights.

Thursday, May 26th was a warm outdoor-inviting day, much of which the directors spent indoors planning. But Thursday evening was different. They got a chance to celebrate with us on a dinner cruise aboard the Serendipity on beautiful Kempenfelt Bay.

Friday evening May 27th was fun time again. This time the fun spot was "Pete's Place", a unique entertainment venue close to the shores of Lake Simcoe. The evening highlights were a pig roast dinner followed by a blues band lead by Juno award winner Jack de Keyzer.

Saturday, May 28th was a mixture of fun and education. Our Chapter, sponsored a Seminar on Risk Management. The panel of speakers included a host of national speakers. Congratulations to members of our Chapter who joined us to take part in this unique educational experience.

Winning, instead of risk, was on the minds of the National directors and our Chapter representatives as they prepared to enjoy a trip to Georgian Downs on Saturday evening May 29th. Charlie Oliver claimed he and his dinner seat-mates were so good at selecting the winning horses they won enough to pay for their wine consumption. We can say, "a good time was had by all."

We owe a debt of gratitude to the sponsors of this Conference. They are: Rogers, Enbridge, CMHC, Maxium Financial, Canam, GRG, Brown & Beattie, Stephen Farley-Freedom 55, and BDO Dunwoody.

Milton W. Zwicker, President

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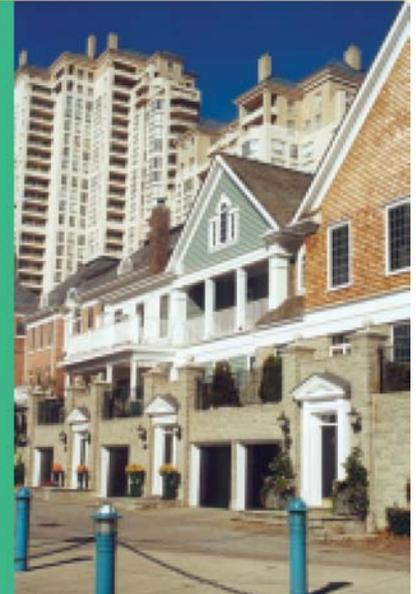
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