

TM

review

THE VOICE OF CONDOMINIUM

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Constructive Dismissal

Inside this issue

- 2 Message from the President
- 3 May 2006 CCI National Mid year Meeting – Montreal, Quebec
- 5 Constructive Dismissal
- 6 Condo Cases across Canada
- 9 Not every contract a Condo Corporation signs is Enforceable
- 11 Chapter Chatter
- 15 Making Conference Attendance Easier
- 16 ACCI Re-Certification



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John Peart

Message from the President

Summer



I have just returned from the CCI National Board of Directors mid year meetings. This year they were in Montreal. More of the meetings, workshops and events are elsewhere in this issue.

These twice yearly face to face meetings (mid year and AGM) give condominium owners, directors and professionals the opportunity to find out what is happening elsewhere in Canada and to share ideas and concerns. Several things struck me from the exchanges this time.

The first is how easily it is to be taken off guard by legislative initiatives. Statutes, Regulations, advanced rulings and policy changes that affect condominiums and the people who live there are passed by Provincial, Federal or municipal authorities with minimal or no consultation or input from the condominium community.

On March 28, 2006, Bill 21 (The Energy Conservation Leadership Act) received Royal Assent in Ontario. It has not yet been proclaimed and the Regulations have not yet been put in place. The purpose of this Statute ("Bill 21") is to allow or require (it is not yet quite certain) smart meters to be installed in every home in Ontario by 2010. The purpose is to better manage electrical energy in the Province. Depending on the Regulations, the cost to supply and install these smart meters may be the responsibility of the unit owner or the condominium corporation. Despite what the province called "public consultation sessions", the

original draft section relating to condominiums made no sense. It was circular and was clearly drafted by someone with no understanding of the interaction of a condominium's declaration and bylaws. At the last minute, and with the concerted pressure by the Toronto Area CCI chapters and professionals, the wording was changed slightly but the fall out of Bill 21 is still to come.

The licensing of condominium managers is a hot topic in the Western Provinces. Lost in the debate is what does it mean to condominium corporations: does it mean better management, more government involvement, higher condominium fees?

Recently, an Advanced GST Ruling was issued in Saskatchewan which seemed to say that condominium fees for vacant land condominium corporations attracts GST as there is not a residential dwelling on the property even if one is later constructed. Clearly, the person who issued this Ruling had a very imprecise understanding of condominiums.

Across Canada, municipalities are finding new ways to download costs to home owners – garbage collection, hydrant flushing, etc. These initiatives often impact condominium corporations more quickly and more dramatically than others. These initiatives are also instituted with minimal or no public consultation or discussion of alternatives.

The message here is that each one of us

in the condominium community must try to be proactive and ensure that we not only stay current with but also respond to government initiatives as they arise. I know that CCI Toronto is considering retaining a government consultant who will help keep the Chapter aware of government proposals and allow the Chapter(s) to respond in a meaningful and creative way. Often a response needs to be nothing more than explaining what a condominium is and how the proposal will impact, for good or bad, on the condominium community. I also know that CCI will also be discussing the Advanced Ruling with GST officials to have it changed or withdrawn.

The second area that was brought home to me at all of the workshops that I attend and discussions that I have across Canada is how similar our issues are. The Montreal meetings had workshops on mould, reserve fund studies, human rights, managing difficult people, managing difficult situations and managing difficult boards. No matter where you are in Canada, there is a sameness. Answers or perspectives on these issues have often been considered elsewhere in Canada. If you want to see possible solutions or other perspectives, to these and other items, I invite you to go the CCI website (www.cci.ca). Whether you or your condominium corporation is a CCI member, you and your fellow condominium owners can visit the members only portion of the CCI site with your assigned password and have access to past articles from Chapter and National publications as well as our growing library of legal cases from across Canada.

Lastly, I want to let all of our CCI community know that in 2007, we celebrate our 25th birthday. CCI has grown in every respect over the past 25 years: membership, services and effectiveness. I hope that you will take part in our celebration. In the meantime, I hope to see you at the National meetings, conference and tradeshow in Toronto in early November, 2006.

John Peart, CCI National President

May 2006 CCI National Mid Year Meeting Montreal, Quebec

By Jamie Bleay, CCI National Secretary

This year the CCI National Board ventured to Montreal, Quebec where it hosted the mid year meetings from May 25 to May 27 in conjunction with a conference organized and hosted by the L'Association des syndicats de copropriété du Québec or ASCQ. After many years of hard work by the CCI National Board and in particular, Peter Leong, board members, chapter members and Administrators from across Canada traveled to Montreal to participate in the mid year meeting.

To say the least, the hospitality of the folks from ASCQ rivals that of so many of the chapters that have hosted the mid year meetings over the years. A night at one of Canada's largest casinos and a tour of two rather impressive condominium projects were just a few of the things that board members and other ASCQ guests participated in. In addition there were many sights and sounds taken such as touring the old town of Montreal and hiking up Mount Royal. Needless to say, fun was had by all once the business side of things was over.

Speaking of the business side of things, the Board met for much of the day on May 25 to discuss the health and welfare of CCI and its many chapters. While not the first item on the agenda, the Board was pleased to welcome Judy Orr from Moncton, New Brunswick. Judy has been working closely with the Nova Scotia chapter to establish a chapter in New Brunswick and we look forward to hearing more from Judy at our next CCI National Board Meeting.

Peter Harris, the CCI Treasurer, reported that once again the finances were in quite good order and predicted a year end surplus of between \$60,000 and \$70,000. Peter then presented the

2006/2007 budget which included, among other things, funds earmarked for CCI's 25th Anniversary Celebration in 2007/2008. Pat Cassidy and Ron Danks agreed to co-chair the Anniversary Committee.

The various committees met later in the day to discuss the status of various committee initiatives, including ongoing promotion of the Ambassador Program, firming up plans for the 2007 Human Rights Symposium and finalizing the National Condo Primer which, when finished, will provide a wonderful bird's eye perspective of condominium legislation across the country.

The ASCQ hosted its conference on Friday May 26, 2006. Mr. Serge Laflamme led the day off speaking about tenants in a co-op co-ownership. After that, French and English speaking workshops on various topics such as risk management, management of people and managing buildings were held. One of the highlights of the day was hearing from Mr. Julius Grey who represented the orthodox Jews in the Supreme Court of Canada in the succah affair.

On Saturday May 27, 2006, Mr. Michel Charlebois, the President of ASCQ spoke about the application of the Quebec Civil Code to the Syndicates of co-ownership after which a lively discussion ensued regarding similarities and differences with legislation in other jurisdictions. Those in attendance agreed to continue the discussion at the CCI/ACMO Conference in November, 2006 in Toronto.

All in all much was accomplished in Montreal. Many thanks to Michel Charlebois and his helpful staff for making CCI feel so welcome!



Notre Dame Basilica in Old Montreal



Patrick Cassidy, CCI National Director and Peter Leong, CCI National Chair attending the ASCQ Seminar



ASCQ Seminar Panelists (L-R): Dr. Sylvain Charlebois, MBA (MC), Patrick Cassidy, CCI-N Director, Michel Charlebois, ASCQ President, Peter Leong, CCI-N Chair, Serge Laflamme, LL.L., guest speaker

Constructive Dismissal



Often condominium corporations need to change their relationships with superintendents, cleaning staff, or other employees. Perhaps the tasks of the job or the services being provided need to be altered. If security concerns have become an urgent matter, the superintendent may need to work longer or different hours; or maybe your concern is over something as simple as flowerbeds need to be added to the superintendent's to-do list or the exercise room needs to be kept open later.

Whatever the concern changing an employee's job description requires careful planning. If an employee is not happy with the changes this may affect job performance; they may quit or look for other employment.

Where the changes materially alter the employment relationship an employee may claim constructive dismissal and entitlement to damages.

While management's right to alter the terms and conditions of employment is not exhaustive employers may make changes so long as they are reasonable.

Where the position is significantly altered the employee should be advised

in writing and consent sought. The date the changes will take effect should be clearly set out in the agreement.

Alternatively a new employment agreement could be offered along with additional consideration such as a bonus, a promotion, or an increase in pay. By offering something new in exchange for the agreement an employer increases the likelihood of its enforcement.

If consent or "new consideration" is not an option, notice of the changes to the employment contract will minimize the risk of a constructive dismissal claim. By indicating the new contract will take effect at a future date, the employee is given time to find new work if they do not accept the changes. Notice should reflect the time the employee would receive if their employment was terminated. When calculating notice, particular attention must be paid to the Employment Standards Act, 2000, and the common law. Though the legislation gives a minimum of one week's notice per year of employment to a maximum of eight weeks, courts will determine the package period on a case-by-case basis taking into consideration such factors as character of employment, length of service of the employee, age of the employee, and the availability of similar employment.

Giving notice is slow; it is not a practical business solution where there is an urgent need to alter the duties of a job. Where there is a sense of urgency an employer could implement the changes in the hope they will be found to be reasonable. Though you risk a constructive dismissal claim, the employee may have an obligation to mitigate their losses.



So long as the work is not humiliating, embarrassing, or a significant reduction in pay an employee may have an obligation to continue to work in mitigation of their damages despite the change.

An employer can take steps to minimize the risk of a constructive dismissal claim by:

1. Having an employment agreement in place allowing the employer to make changes to the terms and conditions of employment;
2. Incorporating broad job descriptions which give flexibility to add or take away duties as required; and
3. Including restrictive termination clauses in the employment contract thereby limiting the notice the employer is required to give the employee of changes.

A carefully worded employment agreement signed prior to commencement of employment will help set employee and employer expectations from the inception of employment and minimize liability in the unfortunate event the relationship is derailed.

*Prepared by Julian Walker and Melynda Layton, Nelligan O'Brien Payne, LLP
Ottawa, ON*

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., ACCI
Nelligan O'Brien Payne, Ottawa



THE HOT TOPIC: IMPORTANT DECISION RESPECTING LIMITATION PERIODS IN ONTARIO

There have been some important recent decisions in British Columbia respecting the appointment of administrators to govern the affairs of "dysfunctional" Strata Corporations.

Aviawest Resort Club v. The Owners, Strata Plan LMS 1863 et al (December 13, 2005)

Appointment of administrator extended

An administrator had previously been appointed (by Court Order) to protect the interests of the minority owners. The court in this case was satisfied that "significant unfairness" still existed between the minority owners and the majority owners. In order to manage this continuing unfairness, the Court felt that it was necessary to extend the appointment of the administrator for a further year. The Court also noted that the administrator might well require the further assistance of the Court under Section 164 of the Strata Property Act, to remedy the significant unfairness. The Court therefore said that "the Court will consider such applications on behalf of the administrator so that he will obtain such documentation and directions that will be required to remedy the unfair matters cited by him that still exist".

[Editorial Note: In a previous decision dealing with the same Strata Corporation (see Condo Cases Across Canada, Part 11, August 2005), the B.C. Court of Appeal ruled that the powers of an appointed administrator could not overcome the voting rights of the Strata own-

ers. However, in this subsequent decision, the Court appears to be saying that the powers of the administrator can be further extended by Court Order. In other words, although the general rule may be that an appointed administrator cannot avoid the voting rights of owners, it appears that a Court may grant any authority to the administrator (including authority of the owners) if necessary to remedy significant unfairness.]

Ranftl v. The Owners, Strata Plan VR 672 (December 19, 2005)

Powers of administrator expanded

The court had previously appointed an administrator to attend to some of the affairs of the Strata Corporation. One of the owners subsequently applied for an extension of the administrator's authority. The Court granted the application. The Court noted that the small Strata Corporation (6 Strata lots) was dysfunctional and ordered that the administrator's authority be expanded to include all of the powers and duties of the Strata council.

UPDATE ON ONTARIO PET DECISIONS

Niagara North Condominium Corporation No. 125 v. Waddington [(See Condo Cases Across Canada, Part 13 (February 2006)) (January 5, 2006)]

Going to the Court of Appeal

In this case, both the landlord of a unit and the condominium corporation had been unsuccessful in their attempts to enforce a "No-Pets" provision in the con-

dominium corporation's declaration. The condominium corporation has appealed to the Ontario Court of Appeal. The appeal is scheduled to be heard in the Fall of 2006.

Metropolitan Condominium Corporation No. 949 v. Staib [See Condo Cases Across Canada, Part 13 (February 2006)] (April 28, 2005 Ontario Superior Court) (November 25, 2005 Ontario Court of Appeal)

Supreme Court of Canada refuses leave to appeal

In this case, the Trial Court had declined to enforce a "No Pets" provision in a declaration in circumstances where the condominium corporation was deemed have been aware of the presence of a cat in a unit, but was too slow in taking steps to require the cat's removal. The decision was upheld by the Ontario Court of Appeal. The condominium corporation then sought leave to appeal to the Supreme Court of Canada. Leave to appeal was refused by the Supreme Court of Canada in April 2006, with costs awarded to the owner.

Other Ontario Cases

Simcoe Condominium Corporation No. 78 v. Simcoe Condominium Corporation Nos. 50, 52, 53, 56, 59, 63 and 64 (February 16, 2006) Superior Court Decision

Shared facilities committee has authority to make most decisions respecting shared facilities

This was an appeal from a decision of an arbitrator relating to the rights of the parties under the terms of a Shared Facilities Agreement governing certain shared recreational facilities, including a recreation center, a swimming pool, tennis courts and a marina. The key point of the dispute related to the authority of the shared facilities committee which was established under the terms of the Shared Facilities Agreement between the condominium corporations. One of the condominium corporations asserted that all of the committee's decisions required ratification by each condominium's board of directors. The arbitrator did not agree. The arbitrator held that the committee had the independent authority to manage the shared facilities.

On appeal, the Court upheld the decision of the arbitrator, subject to the following proviso. The Court noted that certain decisions specifically required approval of each condominium corporation under the terms of the Shared Facilities Agreement. The Court therefore confirmed that the authority of the committee was subject to these specific restrictions contained in the Shared Facilities Agreement.

[Editorial Note: It seems to me that the committee's decision-making authority would also have to be subject to any provisions of the Condominium Act requiring the involvement of the owners of the units in the condominiums. In my view, the Shared Facilities Agreement would have to be subject to the rights of owners under the terms of the Condominium Act.]

The Court also varied the arbitrator's decision on costs. The Court said that the arbitration agreement between the parties stated that the total cost of the arbitration was to be divided equally among each of the seven participating parties.

Romano v. D'Onofrio (November 23, 2005)

Possible defamation at social club AGM

At a social club's AGM, the President allegedly made derogatory statements about one of the club members. The club member sued the club and the President for liable, slander and intentional infliction of mental suffering.

The Ontario Court of Appeal said that there was possible basis in law for such a claim and accordingly allowed the claim to proceed to trial.

[Editorial Note #1: In the editor's view, the same principles could apply to derogatory statements (about an owner) made by a condominium director at a condominium AGM (assuming such statements were false)].

[Editorial Note #2: The concept of qualified privilege may protect a condominium director, in some cases, from claims for defamation. Under defamation law, corporate directors and officers are protected by "qualified privilege". In general, this means that corporate directors and officers can report freely to the corporate members, without fear of resulting claims for defamation, provided there is no malicious intent in the reporting. Having said the foregoing, I recommend the following: Wherever possible, it is best to avoid making false, derogatory statements about any owner.]

Peel Standard Condominium Corporation No. 668 v. Dayspring Phase I Ltd. (February 9, 2006)

Condo loan approved

Prior to the turnover meeting, the condominium corporation borrowed \$1.7 million for the purpose of acquiring "equipment" to be part of the common elements.

Following turnover, the new board alleged that,

- (a) the loan was *ultra vires*. (i.e. the condominium corporation did not have proper authority to borrow the money.)
- (b) the loan and the equipment purchases were not properly disclosed to purchasers; or alternatively, the loan monies were not applied in the manner disclosed.

The new board accordingly asserted that the interests of the lender should rank below the interests of the condominium owners, and that the loan therefore should not have to be repaid.

The Court said that condominium corporations are creatures of statute. So, condominium corporations do not have the powers of a natural person. They can act only in accordance with the authority

afforded by the Condominium Act and the corporation's governing documents. However, the Court said that in this case, the loan agreement was properly approved by the board and by a by-law of the condominium corporation. Therefore, the loan was properly arranged within the statutory authority of the corporation.

The Court also said that any weakness in the disclosure and any misapplication of the loan monies was not within the control of the lender. The Court therefore found that the lender was entitled to recover the loan monies from the condominium corporation.

[Editor's Note: As I read this decision, I found myself asking the following questions:

- Was there any change to the common elements?
- Were the requirements of Section 97 of the Condominium Act all satisfied?]

Metropolitan Toronto Condominium Corporation No. 678 v. First Royal Management Inc. (March 16, 2006)

Dispute respecting the sharing of costs related to a shared parking garage

This was an appeal from the trial judge's determination of the rights and responsibilities of the parties under a written "parking garage agreement". First Royal Management Inc. owns and operates a commercial underground parking garage below a residential condominium building. The condominium corporation made claim for recovery of expenses which it felt were owed to it under the terms of the parking garage agreement. The trial judge ordered that various amounts be paid to the condominium corporation. The condominium corporation felt, however, that additional amounts were owing and appealed for recovery of those additional amounts. The Ontario Court of Appeal upheld the trial judge's decision, and dismissed this appeal.

The garage owner also cross-appealed the decision of the trial judge, asserting that amounts owing before July 4, 1995 were statute-barred by the provisions of the Statute of Limitations. The Court of Appeal agreed and allowed this cross-appeal.

Costs of the appeal were awarded to the garage owner.

Alberta Cases

The Owners Condominium Plan No. 8221011 v. 775601 Alberta Ltd. and Doug Dueck (September 27, 2004)

Condominium corporation granted Certificate of *lis pendens* against unit

The condominium corporation had started a lawsuit against the Defendants. The lawsuit included claims for the following:

- Recovery of unpaid condominium fees;
- Recovery of proceeds from alleged improper sales of parking stalls;
- A declaration that the common meeting room was part of the common property.

The condominium corporation also obtained and registered a certificate of *lis pendens* against a unit owned by the Defendants. [A certificate of *lis pendens* against a parcel of land (such as a condominium unit) is appropriate in cases where the Plaintiff has commenced a lawsuit which claims an interest in that parcel of land.]

The Defendants challenged the validity of the certificate of *lis pendens*. The question for the Court was: If the Plaintiff's claims are successful, would the Plaintiff then have an interest in the unit? The Court's answer was "yes" and the Court therefore refused to discharge the certificate of *lis pendens*.

Condominium Plan No. 0020701 v. Investplan Properties Inc. (April 4, 2006)

Class Action by Condo Corporation

According to Section 25(3) of the *Condominium Property Act*, a condo-

minium corporation has authority to sue for and in respect of any damage or injury to the common property. However, there is uncertainty in the law as to the extent of the corporation's rights to sue in relation to the common property. In particular, the courts have said that a condominium corporation cannot pursue claims for misrepresentation in respect of the common property, because such claims are considered "individual" as opposed to "corporate".

British Columbia Cases

In this case, the condominium corporation wished to assert both "corporate" and "individual" claims and accordingly sought certification to advance the "individual" claims in a class action (the class consisting of all persons who purchased a unit in the condominium from the developer). The Court granted the class action certification. The Court said that it was most efficient, and not unfair, to deal with all of the claims in a single action. Furthermore, the fact that the condominium corporation was not a member of the class was not fatal to the application. The condominium corporation met the requirements of Section 2 (4) of the *Class Proceedings Act* in that regard.

Extra Gift Exchange Inc. v. Chung (March 31, 2006)

Restitution for material supplied to condominium corporation, even though no agreement

The condominium corporation decided to put on an event to celebrate the Chinese

New Year and to run a public night market. One of the directors supplied labour and materials for the night market. The Court found, however, that the condominium corporation had not entered into any contract for supply of this work and materials. Even so, the Court said that the director was entitled to restitution. The Court's decision included the following:

"The restitution to which I conclude the Plaintiffs are entitled would not afford them a profit; it would do no more than reimburse their reasonable costs of supplying the materials." [The Plaintiffs were awarded no amount for their labour.]

Strata Plan LMS 307 v. Krusozki (April 6, 2006)

Sale of Strata Lot properly authorized

The owner appealed the lower Court decision ordering the sale of the owner's Strata lot. The owner asserted that the special levy was not approved by a proper vote and also asserted that a further vote was required to authorize the registration of the lien and the application for the sale of the Strata lot.

The Court of Appeal dismissed the appeal. The court said that the vote authorizing the special levy was properly held and also stated that "once the owners had passed, by majority of those present, the resolution to impose the levy on all Strata lot owners, it was not necessary for another vote to be taken" to authorize registration of the lien or the filing of a petition in Supreme Court pursuant to Section 177(1) of the *Strata Property Act* (for a sale of the Strata lot).

Chow v. Strata Plan LMS 1277 (February 28, 2006)

Court orders sectioning to address unfairness

The Strata Corporation contained two types of Strata lots: town houses and apartments. In order to rectify significant unfairness in the cost-sharing between these two types of Strata lots, the Court granted the petition of the townhouse owners for sectioning of the apartment and townhouse Strata lots. The Order was granted pursuant to Section 164 of the *Strata Property Act*.

ACCIACCIACCI

(Associate of the Canadian Condominium Institute)

If you are a professional member of the Canadian Condominium Institute you should seriously consider applying for your professional accreditation. Successful candidates are entitled to use the designatory letters "ACCI" as recognition of their high degree of skill, professionalism and outstanding achievements.

Candidates for the ACCI accreditation must be a professional member of CCI, have at least three years of professional condominium experience, have contributed to the condominium community by teaching courses, writing articles, participating in seminars or providing other services and successfully complete the ACCI examination.

For further information please contact your local CCI Chapter.

Not every contract a Condo Corporation signs is Enforceable: **How can that be?**

By Milton W. Zwicker



What is the Indoor Management Rule?

Not all contracts condo corporations sign are enforceable. The law does not protect those contracts that run afoul of the “indoor management rule”. To most people, other than lawyers, this term sounds like it comes from the rule book for one of those indoor games such as squash. This rule plays a big role in the everyday operations of ordinary business corporations. If you make a contract with one of those corporations, the indoor management rule means you do not have to find out if the representative of the corporation has the legal authority to bind the corporation, except if you know or ought to know the contrary is true. This means you can assume that a company representative, who presents himself or herself as having the authority to bind the company, does indeed have

that authority. You do not need to see a by-law or resolution approving the contract. A court will uphold the validity of the contract signed by the representative of the company, even if the representative acted outside his or her actual authority.

How the Indoor Management Rule Works for Condo Corporations

The law does not apply the indoor management rule to condominium corporations in the same way it does to business corporations. Two Ontario Court cases support the principle that the “indoor management rule” does not apply to condominium corporations in the exercise of their powers. The Ontario Court of Appeal demonstrates in, *Winfair Holdings (Lagoon City) v. Simcoe Condominium Corp. No 46,*

[1998] O.J. 5022, what the lack of a bylaw or resolution means to the validity of a 40-year licence agreement. The licence gave the condo corporation the right to use a swimming pool and tennis court on adjacent property—a substantial asset or benefit to the unit owners. Here, the lack of adherence to the procedural requirements of the Condominium Act (Ontario) was fatal. The facts show the Board of Directors of SCC No 46 tried to renegotiate with Winfair the terms of the licence agreement. In fact the Board, in a letter to Winfair (© Milton W. Zwicker, 2005), said it no longer considered the condo corporation bound by the licence. Winfair really wanted to void the agreement, so it accepted the Board’s position, although it was aware many unit owners opposed termination of the agreement. Eventually, Winfair asked the Court to find the licence invalidate, relying on the professed cancellation by the Board. Winfair, however, lost its bid to invalid the licence because it ran head-first into the indoor management rule. If Winfair’s case had been against a business corporation, I bet the outcome would have been different. The Court would likely have said Winfair was entitled to rely on the Board’s right to cancel the agreement. Why did the Court rule in favour of the condo corporation?

The Power of Owners

Subsection 38(1) of the Condominium Act (Ontario) required the positive vote of 80% of the unit owners to make a substantial change in the assets of the corporation. The licence agreement represented a substantial asset of the corporation. Thus, the Court said, “Absent an 80% vote, any repudiation of

the agreement by the Board was ineffective. Winfair cannot avoid the application of s. 38 by invoking the 'indoor management rule', and by relying on the Board's apparent authority." To reinforce the point, the Court said "the indoor management rule, applicable to ordinary corporations, has no application to a condominium corporation." This is a clear statement of the law. Despite this, the application of this principle comes under attack in *Rogers Cable Communications Inc. v. Carleton Condominium Corporation No 53*, [2005] O. J. No 921.

The Indoor Management Comes to the Rescue

One member of the CCC NO 53 Board signed an agreement with Rogers that forbid the Condo Corporation from making a Bulk Service Agreement with another cable service provider. I bet you can guess what happened next. The condo corporation decided to sign a Bulk Service Agreement with ExpressVu. Did you win the bet? Now that you know how the 'indoor management rule' applies to condo corporations, I wager you would decide this case the same way the Honourable Justice Roy, Ontario Superior Court of Justice, did. He held that since the agreement was signed by a single member of the Board without a supporting resolution, it was not enforceable. Thus, the corporation was free to make an agreement with ExpressVu.

Lesson One

Suppliers to condo corporations should heed these words of Justice Roy:

Given the nature and possible consequences of this agreement on the parties, I would have thought that Rogers would have made sure their contract received the approval of the Board of Directors if they wanted a binding agreement. That is why the Legislature enacted the Condominium Act. If all the condominium owners are to be bound by an agreement it must comply with the Act.

Lesson Two

Justice Roy also wrote words that all Board members should heed:

A single member of the Board of Directors cannot bind the condominium corporation. In accordance with the Act, all decisions of the Board of Directors must be taken at a meeting of the Board of Directors where a quorum has been established. Further, contracts cannot be executed without authorization by resolution of the Board.

A Protective Device

If the indoor management rule applied to condominiums, chaos may result. Most members of Boards of Directors, unlike directors of business corporations, are not professional managers or administrators. They may advertently or inadvertently commit their corporations to a course of action that their Boards have not approved. Also, they may act in a way that is contrary to their budgets and the governing documents of their corporations. In the CCC No 53 case Justice Roy said: "I have serious doubts that the member of the Board knew or appreciated what he was signing." Similarly, third parties often assume that a Board member has the authority to make binding agreements. Some suppliers will continue to challenge the common-law indoor management rule. To avoid the time and expense defending these challenges, provincial legislatures should amend their Condominium statutes to provide that the indoor management rule does not apply.

Meantime, to avoid contract challenges, condo boards need to remind their office holders that they do not have the power to bind their corporations. Also, suppliers, to obtain binding contracts, need to understand that condo corporations must fulfill all procedural requirements of the applicable provincial legislation. This means, suppliers to condo corporations need to obtain a copy of a resolution or by-law that approves the purchase of their goods or services.

The CCI National Newsletter is
Published 4 times per year –
March, June, September, December.

New Advertising Rates

Membership has its benefits, and advertising is a key advantage to getting your company and product information out to other members in the industry.

	Rates	
	One Issue Only	4 Issues (Rate per Issue)
Full Page	\$2500	\$2125
1/2 Page	\$1200	\$1020
1/3 Page	\$800	\$680
1/4 Page	\$500	\$425

For all general enquiries and for more information regarding advertising in the CCI Review newsletter, please contact Diane Gaunt at (416) 491-6216.

Closing dates for submission are as follows:

- Spring Issue – February 15th
- Summer Issue – May 15th
- Fall Issue – September 1st
- Winter Issue – November 15th

Your comments, suggestions and articles are welcome.

Please send them to the attention of:

The Editor, National Office

Canadian Condominium Institute
2175 Sheppard Ave. E., Suite 310
Toronto, ON M2J 1W8.

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

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CHAPTER CHATTER

Ottawa & Area Chapter

I see I missed the deadline for inclusion in the Spring 2006 CCI Review so I'll bring you up to-date on what we have been doing since the new year.

The Chapter started off the year running. Well, some of us were running, I ended up on crutches after a nasty fall in early December. The first event for 2006 was held on February 1st with a winter evening seminar. It was the second year that the Chapter offered Ottawa's version of Money, Guns and Lawyers – Case Law Update with seminar leaders John Peart, LL.B., A.C.C.I., F.C.C.I., Low Murchison and James Davidson, LL.B. A.C.C.I., of Nelligan O'Brien Payne. This informative session based on new developments in court decisions proved to be a great success with a very successful turnout.

Following the February session, the Chapter introduced a Condominium Director's Club forum to condominium board members on Wednesday, March 1st. The objective behind the forum is to provide those present with a great topic – start the conversation, provide a moderator to keep things rolling but let the director's share amongst themselves how they may have dealt with the matter at hand or any other matters that may arise during the conversation. The first forum topic of an ongoing series of these forums – How a Condominium Board can deal with Problem Owners and Residents! was moderated by James Davidson, LL.B., A.C.C.I., of Nelligan O'Brien Payne. The registration fee was underwritten by the firm Nelligan O'Brien Payne in order to reduce the registration fee. It proved to be a unique opportunity for Board members to share experiences and was well attended.

And then, once again, the registration was full for the April 22 and 23 Spring offering of the Directors Course. Our speakers

are owed a great deal of thanks for making this course so popular. We already have a waiting list for our fall offering of the course on November 18 and 19. We were able keep up with the times and to cut down on our printing costs for the course this time by including the Golden Horseshoe Chapter 2005 Resource Material on CD.

And that's not all, on June 7th, the Chapter continued its series of Director's forums with Everything you Always Wanted to Know About Mold But Were Afraid to Ask being the topic. This session was moderated by Ken Ruest, Researcher from CMHC; Tim Sinclair, Project Manager, Halsall Associates Ltd. and, Lydia Renton, Director, Industrial Hygiene and OHS, WESA – Water and Earth Science Associates Ltd. The registration fee was underwritten by Halsall Associates Ltd. in order to reduce the registration fee. The participants left with updates from the professionals on when and how to deal with mold should the need arise. There were also present those who have experienced first hand the menaces of mold.

Now back to the day-to-day operations of keeping all of the other administrative work flowing. It is time for renewal letters to be sent and then followed up with the access letters to the Members Only section of the National web site. Our membership is at an all time high and is expected to grow even more in the new year.

For more information on enrolment in our courses, seminars or the Condominium Director's forum, please call (613) 247-4718 or visit the web site at www.cci.ca/Ottawa.

Liz Dowd, Administrator, Ottawa & Area Chapter

South Saskatchewan Chapter

Spring is struggling to appear in South Saskatchewan, but we as a chapter have a spring in our step as we prepare for our annual AGM along with our fall conference and trade show on October 21, 2006. Deborah Howes will be our guest speaker, who we have always found informative with a sense of humor.

We are also preparing the program for the National Spring Conference to be held in May of 2007. Our Committee is going all out to put Regina on the map as a milestone as to what a small chapter can do.

Lee Ann Brown, President, CCI-South Saskatchewan Chapter

Vancouver Chapter

We held our latest seminar – Legal Roundtable Discussion – Ask a Legal Expert with four Lawyers including Mari Warfolk of Miller Thompson LLP, Tim Peters, Veronica Franco of Clark Wilson LLP and our Chapter President Jamie Bleay of Access Law Group. The seminar was very informative and well attended.

Membership is continuing to grow and we are working hard to help raise the awareness of what CCI stands for and we are looking forward to continued growth this year.

You can contact us through our website at www.cci.ca/Vancouver or by email at contact@ccivancouver.com

Kevin D. Middleton, Vice-President, CCI Vancouver Chapter

CHAPTER CHATTER

Toronto Chapter

Spring was a busy time for the Toronto Chapter of CCI. The chapter hosted both Basic and Advanced Course sessions in March and April and the new half day "Condo 101" Course was held on Saturday June 10th. Attendance at all three courses was strong, further indicating the high demand for director training in the Toronto area.

CCI Toronto participated at Springfest on April 27th, where Board members, Tom Park, Lisa Kay and Vic Persaud attended to the well-visited CCI-T exhibit booth. An educational seminar on the topic of 'Performance Audits' was presented by Gina Cody, Janice Pynn and Mario Deo. The trade show booth was then packed up and sent to the annual Toronto Real Estate Board Trade Show on June 15th where the benefits of CCI membership were promoted to hundreds of realtors attending the show.

The other highlight of the 2006 spring season was the CCI National semi-annual meetings and conference held this year in Montreal. Several Toronto Chapter members were fortunate to attend the educational sessions and enjoyed the numerous networking opportunities the event offered.

Lobbying efforts continue through CCI Toronto on various issues including Hydro Security Deposits and Bill 21. Press releases and updates on these and other issues can be found on the Chapter website at www.cci-toronto.org.

Lynn Morrovat, CCI-Toronto and Area Chapter Administrator

Huronia Chapter

Our Basic Director's/Manager's Course held every spring in Barrie was a great success. Attendees traveled from as far away as North Bay. We are grateful once again to the many speakers who volunteered their time including condo insurance expert, Mark Shedden. On April 22nd, our Chapter hosted a seminar in North Bay and as always, there was a significant turnout. Orillia is the focus of our next seminar, June 10th.

The inaugural session of our Chapter's Presidents' Club kicked off in style May 8th with special guest, Gerry Hyman. We were honoured to have him and truly appreciate his generosity. More seminars and sessions are in the planning stages for the fall including – hopefully – an introduction to the Risk Management Protocol.

A number of condominiums are in the early stages of development, especially in the towns and cities surrounding the numerous lakes in our region.

The Board of Directors extends its best wishes to outgoing director, Jim Bunting. Jim played a key role in the success of last year's Semi-Annual Conference in Barrie. We welcome newly appointed members, Robert Weinberg and Fern Lafrenière.

Bob Skeaff, Huronia Chapter

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London & Area Chapter

This is the final issue of 2005/2006. It has been a wonderful year of growth and education in London and the surrounding area. I thank everyone who has made my job as Administrator the pleasure that it is and I look forward to working with you in the upcoming year.

The membership renewals went out with the March issue of the newsletters. I thank all of you who have responded to date, and urge all of the members to renew as soon as possible so that you will receive all the annual general meeting material from National, as well as from the Chapter and so there will be no interruption in your newsletter mailings.

Since we last met in the pages of the CCI Review, National Edition our last two seminars took place and we sincerely thank the panellists who stepped up to the plate and provided some excellent learning for us. "Technical Audits/Reserve Funds: What the ##!! are you talking about?" on March 28th gave you our experts Barry Scott, LL.B., ACCI, FCCI of Scott, Petrie Brander, Walters & Wright LLP, Jeff Boivin, P.Eng. of Trow Associates Inc., Fraser Grant, BA, CPM, FRI, CRP, ACCI of THE-GRANTS.COM INC., and Susan Size, CMOC, ACCI of Thorne Property Management Ltd., all of them doing their part to walk us through the intricacies of the performance and technical audits and reserve fund studies, the legalities involved, and the manager's summary. Then on May 16th, "There Are No Stupid Questions!" was our annual get together to respond to all those burning questions that seem to crop up as the year progresses – "a final hurrah" shall we say. We

are the first to recognize that many questions relating to condominium ultimately turn to the law for assistance, so we brought in the big guns, the lawyers, for our panel. Brian Bovan, LL.B., Jeffrey Bell, LL.B. and Joe Hoffer, LL.B. of Cohen Highley, Michael Lamb, LL.B, and Barry Scott, LL.B., ACCI, FCCI each addressed with case law a particular and popular field of concern within the condominium community, followed by a Q&A period. The CCI Board of Directors, all of whom represent many other professional areas, were there to respond to other questions that came up. It is truly a pleasure to be able to provide such a forum for our members benefit. We all learn just a little more about the condominium lifestyle we have chosen to live and work in.

So what's next? We plan for 2006/2007 - beginning with our Annual General Meeting on September 26th and our 2-day Condominium Course on October 14th and October 28th. The Education Committee will meet to plan out the seminars for the year, the Condominium Round Table Committee will set the groundwork on the topics for their discussions, and the Board of Directors will continue their work to make this chapter all that it can be for the members of the London and area and I will be here to assist you in any way that I can.

We wish you a lovely, productive and healthy summer and look forward to seeing you in September.

Trish Kaplan, Administrator, CCI-London & Area Chapter

Nova Scotia Chapter

Hello once again from Halifax! CCI-NS chapter has continued with our seminar presentations this year with two since our last report.

Our CM200 course was held on February 28 and was a great success judging from the evaluation sheets handed out and collected at the event.

The newest education program we developed this year called 'What Every Realtor Should Know About Condominium' was held on April 4. Although the attendance was not as large as we anticipated it was an extremely well conducted event with Patrick Cassidy leading and Judy Foran, a new addition to our Board this year providing the necessary Realtor insight. Our thanks go to Judy and Patrick for putting together the material and giving such an entertaining and informative presentation. Our Board has added a new member to its ranks with the addition of Gus Richardson. We first met Gus as a presenter

at our Insurance Seminar last year and again in January when he conducted our Arbitration and Mediation Seminar. We welcome his legal expertise and thank him for his involvement.

Our focus now turns to two matters. Number one is increasing membership. For our last two meetings before summer break we will discuss and implement ways to do this. We realize that with all the condo construction going on that we should have a larger membership than we do.

Our other interest is developing topics for new education seminars based on what our members are telling us they want and need, and by doing so we will fulfill our mandate by responding to the needs of the condominium community. We'll keep you posted!

All the best from
Norma Cameron, President, CCI-Nova Scotia Chapter

CHAPTER CHATTER

Windsor-Essex County Chapter

Our Directors' Club is an innovative addition to our CCI membership. Local Directors from various condominiums throughout Essex County meet informally to discuss the issues concerning their particular condominium. Ideas and solutions are shared, often resulting in creative and inexpensive solutions. Most importantly, friendships are formed. We are also planning a complimentary dinner for all our members at our Annual General Meeting in the Fall.

We have great advertising opportunities for our business members in our Directory and Newsletter circulations. This is just in time for our many new professional members from the real estate industry who have recently joined our Chapter. Please don't forget to renew your membership to ensure that you receive a full year of benefits starting July 1, 2006. Our local website is also capable of providing link-ups to business members who wish to take advantage of this marketing service.

Our 2006 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 or the Directors' Club, 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

Northwestern Ontario Chapter

Our recent seminar dealing with a review of the first five years of the Condo Act and a "claims protocol" was very well attended with a lot of interest and questions directed to the insurance protocol presenters. We will be taking the summer off in terms of seminars with our next seminar scheduled for September 27. We will be dealing with the issues of Board governance and anticipate a good response from individual Board members. We are continuing to make progress with our newsletter with a first draft ready for review and distribution for summer.

Paul Muller, NW Ontario Chapter

Golden Horseshoe Chapter

The chapter's biggest endeavour to date, the Condominium 2006 "Making Life Easier", Conference and Trade Show was held on April 22nd. It was a resounding success. The 350 conference attendees heard from 42 speakers about how to address the challenges owners, directors and managers often encounter. The trade show had 36 companies and organizations represented and by all accounts was extremely well attended. With comments that the event was very informative, professional in its presentation and organization, I have to thank my Board colleagues and chapter administrator, Marianne Hallas for the devotion and energy that went into this project. Thanks also to our guest speakers. Without the generous support of our sponsors and companies providing door prizes, we could not have presented the conference in the way we did. Special thanks to Property Management Guild as the Platinum Sponsor. Enquiries about when we are going to run the event again are already being received.



Golden Horseshoe Chapter Board of Directors
Photos by Brian Carnahan, courtesy of *The Hamilton Spectator*.

As if the conference and trade show were not enough, in June, the chapter presented an evening seminar about the seedier aspects of condo living; recognizing and preventing grow house operations, prostitution rings, crack houses. Again the event was well attended and a note of thanks to our guest speakers.

Next will be our Annual General Meeting which for the second year will be held as part of a dinner cruise of Hamilton Harbour. Scheduled for September 14th I would recommend booking early since based upon last year, it will likely sell out.

Our Level 200 Directors course is scheduled for September and October in Burlington and Cambridge. Our web site, www.ghccci.org will have all the details.

Kim Coulter, ACCI
Chapter President

Making Conference Attendance Easier

by: Don Graves, Board Member of CCI-Golden Horseshoe Chapter, President of HCC #32



"The response was overwhelming, especially the number of attendees and genuine interest in the services we offer!" That enthusiastic quote came from one of the 36 exhibitors that made up the trade show component of the Golden Horseshoe Chapter's April 22nd Conference & trade Show, 'Condominium 2006-Making Life Easier.'

Forty-five speakers and over 350 delegates enjoyed an activity-packed day at the Hamilton Convention Centre for the one day conference. Attendees searched out the latest in condominium technology at the trade show in such areas as property management, engineering and Reserve Fund Studies, trade organizations like ACMO, elevator services, restoration and building envelope needs, insurance, finance and fire safety facts from the local Fire Department.

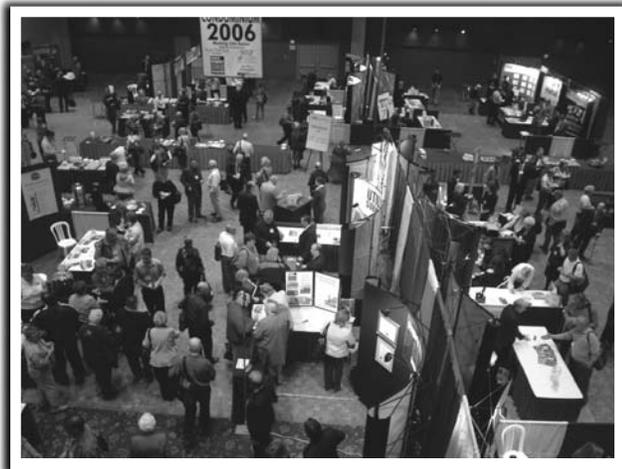


A frank and informative Plenary session chaired by the Chapter President, Kim Coulter spearheaded a full day of workshops featuring such choices as, Fraud and other Condo Crimes, Decorating for Small Spaces, Dealing with Difficult People, Human Rights, and Buying and Selling Condos to highlight a few of the 12 topical and highly relevant choices. Well catered and cared for attendees seemed to thoroughly enjoy the day.

Making Life Easier: a grand title for a conference full of ideas and suggestions to make living in a condo easier. Easier to understand condo rules and why the rules are necessary. Easier to accommodate owners when health and age make change essential. (I finished the day with three fine suggestions for some neighbours faced with leaving their 2 storey condo town home after 20 years for a 1 floor apartment. (Now they might stay... and save a chunk of money in the bargain.) Easier to understand why owners should step forward to serve on their condo board and easier to deal with that awkward owner we all know exists and we'd all like to forget. And easier to turn your 3 acre gardening ideas into container sized reality. Oh, and I must not forget the suggestions about decorating a complete highrise unit that is the size of some people's living room.

Getting there was easy; the Convention Centre is well suited to a planned day of this nature. Registration was a breeze, well organized with one of the best goody bags I've seen in a while. I was at the breakfast line almost before I could smell the coffee.

I usually hate trade shows for two reasons; the aisles between the exhibitors make for close relationships of the awkward kind, and the give-aways are boring, not that I'm there to collect another pen. Making Life Easier changed my mind. I know that articles of this type should not promote individual companies, but I have to single out the best company handout I've ever seen. It made sure



Photos by Brian Carnahan, courtesy of *The Hamilton Spectator*.

that I will never forget the company's name or the experience. Rainbow Mississauga Ltd (RML) asked delegates to copy their company mission in their own handwriting and hand it over to certified graphologist, Elaine Charal who spent the day entertaining delegates with a one-on-one handwriting analysis. I can still remember the mission statement and I might never look at how I make my 't, o and th' with the same blasé attitude again.

Every trade show booth had knowledgeable staff that didn't look as if they were being punished at having to be there. I arrived with a number of topics high on the need-to-know-about list for my condo complex and I left with good answers, sound advice and a few new solutions not yet considered.

The sessions were well thought out and aimed at the condo owner and the condo board member. Obvious you might say, but not necessarily so. I've been to many conferences over the years and have found that many sessions appear to be designed by the presenter for others in the same field. I'm not a lawyer, a landscaper, a mediator, a decorator, roofing specialist or aging population consultant. I'm a retired teacher and Board President who knows these topics are important but not expert in how to source the information I need, the priorities I should consider, or the quality benchmarks I need to develop.

What was most important to me was what I learned. It will help me become a more informed Board member which for me means that I can better understand the advice I'm offered by our Property Manager. In this complex arena of condo rules, Reserve Fund Studies, risk management protocols to name but a few, Board members spend a chunk of the condo fees paid by unit owners on professional property managers. It makes sense to me that an informed board member is situated to get better value for the money spent than an uninformed one.

And having a well planned day, with excellent speakers, a spacious and interesting trade show and good food made what I need to learn... easier.

ACCI Re-Certification

The condominium world relies on professionals for many aspects of condominium living. CCI recognized this reliance in the very early years of its existence and established a program of professional certification – the ACCI. The intent was to establish the identification of competence in condominium expertise to ensure condominium Boards only hired qualified professionals. A professional can only take the ACCI exam after demonstrating extensive involvement with condominium in their particular professional discipline. The designation has flourished and become recognized as the standard in Canada for professional condominium advice.

A few years ago the National Board began discussions on the need to ensure ACCIs were maintaining and enriching their professional ability as the condominium world evolves. This resulted in a Recertification Standard based upon teaching, taking courses, involvement in CCI and improving professional knowledge. CCI has progressed in this direction to preserve the importance of the ACCI designation and to confirm the standard of professional advice available to condominium corporations is of the highest standard.

Provincial Chapters have been asked to file a list of all ACCIs in their provinces and to confirm they have met the recertification requirements. Chapters are strongly encouraged to complete this task if they have not done so.

The Membership Committee of the National Board of CCI has taken ownership of this ACCI Recertification. They will continue to monitor the initiative and recommend changes to the National Board to improve the initiative as we progress together. Identifying and improving professional standards will only strengthen the level of professional advice available to condominium corporations throughout Canada.

If your Chapter has not filed the list of ACCIs and confirmed their recertification please ensure they do. If you hold an ACCI please contact your local Chapter to confirm you have been included in their submission to National. Together we can only improve all aspects of condominium living.

*Patrick Cassidy, Q.C., ACCI, FCCI
Chair, CCI National Education
Committee*

10TH ANNUAL CCI-T/ACMO CONDOMINIUM CONFERENCE

Mark your calendars now for this exciting annual Conference and Trade Show that promises an enlightening array of educational sessions and outstanding networking opportunities.

Suppliers and Trades will be exhibiting on November 3rd and 4th. Be sure to visit the Trade Fair arena to establish new contacts and view new products and services.

Delegate Registration for the Conference begins late June 2006 – watch for further details coming soon!

Visit the Condominium Conference website for further information on Exhibit and Sponsorship Opportunities!



Exhibit booth space is available to CCI or ACMO members only and has been sold out early for the past two years – so don't delay! Book early for preferred booth locations. (www.condoconference.ca)

November 3rd & 4th, 2006

Doubletree International Plaza Hotel
655 Dixon Road, Toronto ON