

# ASK THE EXPERTS



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# PRESIDENT'S MESSAGE

Well, the summer of 2019 has finally arrived! Amidst torrential downpours and heat waves, it seems like this will be a summer to remember. I hope you are all enjoying it and making the most of it. Don't forget all that snow and the cold that we will experience in January and February for those who are lucky enough to remain in Huronia.

The condominium industry continues to evolve and change and our Board has been working very hard to keep up with a variety of different aspects of work that arise in their own practice and surface at CCI Huronia. At the Board level, we are hearing about development issues throughout Huronia, while continuing to meet with and work with new boards who are overwhelmed with the depth and knowledge needed to be great leaders. CCI Huronia is so proud to be able to "Raise the Bar" for director education to a level that exceeds the mandated level for directors.

Please remember that if your condo has not registered with the CAO, it must do so. Further, all directors who have been elected since November 2017 have to have taken their director training courses within six months. The fundamental elements need to be taken into account.

The condo world in Ontario is still working through all the legislative changes and we anticipate and understand from CCI Huronia's involvement in the CCI Legislative Committee Process that new components of the legislation will be released this year. Accordingly, we hope that you, your boards and your unit owners will join us for our education seminars to bring you up to speed on any changes and how they impact our continuous and ever present condominium issues. We hope you will attend our exciting AGM and Trade Show this year entitled Would You Be My Neighbour? The Mayor of Barrie will be providing our opening remarks at our AGM and Wine and Cheese on Friday, September 20, 2019. The Trade Show and Conference will be on Saturday, September 21, 2019 at Liberty North. We look forward to "Raising the Bar" in your knowledge as a condominium participant.



**Patricia Elia**  
B. Comm., LL.B., A.T.C.  
Associate, Elia Associates

# Q&A WITH THE LEGAL EXPERTS



**Patricia Elia**  
B. Comm., LL.B., A.T.C.  
Associate, Elia Associates



**Sonja Hodis**  
Solicitor, Barrister & Notary Public



**Ashley Winberg**  
B.A. (High Honours), J.D.  
Associate, Elia Associates

## Shared Facilities' Insurance

*Q: My Corporation and another corporation share a recreation center that is located on a parcel of land, which is owned by both corporations as tenants-in-common. Our shared facilities agreement says that the shared facilities committee (the "Committee") has to obtain and maintain insurance for the recreation center in the name of Committee. I am on the Committee and we were recently advised by an insurance broker we cannot obtain property and general liability insurance for the recreation center in the name of the Committee. Is the insurance broker correct?*

**Ashley Winberg:** Most shared facilities committees are not incorporated legal entities. Directors' and officers' liability insurance, and property and general liability insurance cannot be obtained in the name of a shared facilities committee if it is not an incorporated legal entity, irrespective of what may be contained in the applicable shared facilities agreement. As your corporation and the other corporation own the parcel of land where the recreation center is situated on as tenants-in-common, the parcel of land and the recreation center form part of the property and assets of both corporations.

Accordingly, property and general liability insurance for the parcel land and the recreation center should be obtained by both corporations, jointly, and be in the names of both corporations.

## Damage to the Common Elements

*Q: Can my Corporation require that a new unit owner repair damage to the common elements caused by the previous owner of their unit?*

**Patricia Elia:** The answer to this question may seem relatively straightforward, but unfortunately it is not. Your Corporation should take proactive steps to ensure that it understands the obligations of owners with respect damage to the common elements. This means reading and understanding the Condominium Act, the Declaration, By-Laws, Rules and the legal description. Your Declaration may not contain a provision that requires owners to rectify or indemnify the Corporation for damage to common elements. This is something that the Corporation should be looking at more carefully to ensure that the scope of the obligation is clear. With this said, what would also be important is whether or not the status certificate for this unit actually had been qualified to advise the new purchasers that there were outstanding issues that had to be rectified. Therefore, there may be a variety of different elements that go into ensuring

that the next unit owner is responsible for the rectification, but there is a way to ensure the same is done.

## **Rules v. Policies**

### ***Q: What is the difference between a rule and a policy?***

**Sonja Hodis:** Rules usually address what you can and cannot do in your unit or on the common elements. Policies create written procedures to guide the Board, property managers and owners on how things will be done from a procedural standpoint. They provide consistency and continuity. Section 58 of the Condominium Act, 1998 as amended (the “Act”) states that rules can be made to promote the safety, security or welfare of the owners and of the property and assets of the corporation and prevent the unreasonable interference with the use and enjoyment of the units, common elements or assets of the corporation. It also sets out the procedures to follow to implement a rule. However, the Act is silent on the issue of policies.

An example of an interplay between the rules and policy can be found in a situation where a condominium has a party room. You may have provisions in your rules regarding the use of the party room and what is and is not permitted. However, you may also have a party room policy in which you outline the procedures an owner must follow to request and use the party room. This policy may contain the form that is required to be filled out to request the room and stipulate how many days in advance a request for the room must be made. The policy may also contain provisions which stipulate that an inspection of the room prior to and after the event will take place with the property manager and owner present in order to assess any damages. The policy may include a form which is the standard inspection form used which outlines which items are inspected. While the policy sets out a procedure for an inspection to occur to assess any damage, your rules should stipulate that the owner of the unit requesting the use of the party room is responsible for any damage caused to the party room by the owner, tenant, guests, invitees

and/or agents and that such damages will be added to the common expenses of the unit.

The difference between rules and policies is why certain things can be contained in a policy but some things must be contained in a rule. Firstly, if you want to be able to take advantage of the enforcement procedures set out in the Act you need to put the provisions you want to be able to enforce in a rule and not a policy. This is because the Act grants the condominium corporation tools to enforce rules. There is no enforcement mechanism in the Act to enforce policies. In the party room example above, you will want to be able to take action against an owner for damage that has occurred as a result of the use of the party room. As such, it is important that the rules contain a provision outlining who is responsible for damages and that this provision is not just contained in a policy. If you are deciding whether to put a provision in a rule or a policy you must ask yourself whether this provision is something you want to be able to enforce if breached. If you want to be able to enforce it, it should be in the rules and not in a policy.

Policies are easy for the Board to change and create and do not require owner approval. Owners cannot requisition a meeting to change a policy but they can to change a rule. While policies are easy to change they are not enforceable. Although rules do not require owners’ approval, they can be subject to an owner’s vote if enough owners requisition a meeting and vote against the rule. However, once the rules are in place they can be enforced.

While policies cannot be enforced, it is important to note that when drafting a policy and creating a procedure, a condominium corporation creates an expectation about how something is going to be handled and establishes a procedure that must be followed. If the condominium corporation is going to create a policy they must be prepared to follow that policy and the procedures set out therein. If they fail to do so this could come back to haunt them especially if they are trying to obtain enforcement orders against an owner. For example, if a condominium corporation has a policy that states if an owner breaches the Act, the

Declaration, Bylaws or Rules they will be given three written warnings before legal action is taken, taking legal action against the owner before the three written warnings have been given may result in the condominium corporation losing the ability to enforce or it may have negative cost consequences for the corporation even if enforcement is successful. If you have a Human Rights Policy, given the procedural duties a condominium corporation has under the

Human Rights Code, it is very important that the procedures set out in the policy are followed by the corporation when a request for accommodation is made. A failure to do so could be a breach of your procedural duties resulting in a payment of money to the applicant requesting accommodation. As such, if you are going to create a policy make sure you follow it consistently. Failure to do so may be worse than not having a policy in place at all.

## Q&A WITH THE ENGINEERING EXPERT



**Mina Tesserie, P. Eng., LEED AP**  
Building Science Engineer  
R.J. Burnside & Associates Limited

### Electric Vehicle Charging Stations

*Q: I am on my condominium's board, and we just received a request from an owner who wants to install an electric vehicle charging station in the common element parking space designated to their unit. We don't want to approve the owner's request as we are worried that the installation may compromise our electrical system. Can we reject the owner's request on this basis alone?*

If the parking space in question is a non-exclusive use common element, then the request could be decided by a vote of the unit owner's. Presumably the parking space in question is an exclusive use common element that is for the exclusive use of the unit owner. If this is the case, a concern that the installation may compromise the common element electrical system is not a valid reason for rejecting the request. You will need to base your reason on a professional engineer's opinion of the capacity of the existing electrical system to handle the power requirements of the proposed charging station. You may request that the unit owner provide a report by a professional engineer confirming whether or not the electrical system can adequately handle the additional power demand. The Board may wish to have their own engineer review that report or they may elect to accept the owner's engineering report.

If the request is accepted, the Board will also want to address the cost of the proposed installation. The Board should consider preparing an agreement with the unit owner that the owner pay for the charging station, any required upgrades to the existing electrical system and any ongoing costs for maintenance of the charging station and associated equipment. This agreement should be registered on title so that all future unit owners are aware of the encumbrances associated with ownership and maintenance of the charging station.

# Q&A

## WITH THE PROPERTY MANAGEMENT EXPERTS



**Jeff Struewing**

Property Manager/VP Operations  
Shore to Slope Management Services Inc.



**Debbie Dale**

President  
MCRS Property Management



**Joanna Tomaszewski**

GM of Condominium Operations  
Bayshore Property Management Inc.

### Records and Storage

*Q: Where do most condominium corporations store their records?*

**Jeff Struewing:** Historically, most corporations have relied on the Property Manager to store their records in paper format. Self-managed corporations sometimes struggle with finding a suitable storage solution and often several Directors end up sharing in the storage of the records and store them in their unit. Storage of paper records can be cumbersome, difficult to search and take up huge amounts of filing space, especially for older and larger corporations. Paper records are subject to fading, tearing and at risk of loss due to flood, fire, theft or other disasters. Digital storage of records is becoming the preferred method these days but surprisingly is not yet the norm. Digital file storage allows for much faster searches, very quick retrieval even from remote locations and when setup correctly eliminates the risk of loss due to flood, fire or other causes. Good digital storage will have redundant offsite backups to Canadian data servers which can easily be retrieved should disaster strike. Digital storage provides greater efficiency in day to day operations (preparing Status Certificates, fulfilling owner requests for documents, etc.) and having core documents

available electronically to owners at any time on secure websites often reduces requests for documents. In shifting to digital storage and delivery of corporation documents, printing and postage costs can be significantly reduced.

### Property Management Fees

*Q: How are property management fees generally determined?*

**Debbie Dale:** There is no one size fits all answer to this question. Condominium communities are each unique. Calculation of fair condominium property management fees, both by the licensed condominium management services provider and by the condominium corporation client, is a moving target that benefits from review over time between both parties. Property – and Board – needs change over time and should be considered. A less experienced (lower paid) manager for the site may be just fine for certain portions of the property life cycle while a seasoned veteran manager with higher salary expectations may be truly essential at other points. The determination of how many service hours will be required to properly serve the needs of the Board, and community, is a difficult calculation which ebbs and flows. Due consideration by both parties is key to success.

Let's break out one component of the fee calculation as an example. As a Board, you need to define how many Board meetings you will hold per annum and how long those meetings will last. For a smaller property with no large projects scheduled, and completely outside the new build TARION processes, a few meetings a year may suffice. For some Boards, a thirty minute teleconference meeting is suitable during business hours to merely ratify primarily email based decision processes; yet, other Boards require meetings in person outside regular business hours, with a Recording Secretary provided, that last from two to three hours. As a licensed service provider, you need to understand the Board's meeting patterns to allocate a cost to the regular Board meetings. A Board meeting allocation of thirty (30) hours or more per annum versus a meeting allocation of under six (6) hours per annum has a dollar value attached to it. Time is money.

Moving along to other components of the equation there is a need for clarity around administrative service needs. It takes longer to respond in a timely manner on a day to day basis to several hundred permanent residents than it does to a few dozen residents who are away for much of the year. The more, the merrier is truly the more, the busier. Although more can be merrier, of course! Toss in bookkeeping and accounting in terms of the number of units, delinquency history, payables for projects and the volume of journal entries. More costs more – as it should.

There is a transition away from the old fashioned 'per door rates' toward fair and appropriate consideration/analysis of time and services required/provided. Any Board that is considering a new provider should first do housekeeping within and determine what their own patterns are, adjust any that may be costly for a provider and be forthright in expectations. Make a list. Check it twice. Thereafter shop the market or chat with your current management services provider to gain an understanding of each other. Pay as you play is gaining popularity and the selling/buying of services from a service menu could be a future wave. A minimalistic service package with extra

services available when/if needed at defined hourly rates might just be worth discussing in an open forum to create a win-win long term relationship that is fair and facilitates success for both 'sides.' Thanks for asking the question!

### Property Management Proposals

*Q: What should we look for when looking for a new property manager?*

**Joanna Tomaszewski:** Hiring the right property management company can go a long way towards enhancing your condominium community in a number of areas including communication, transparency and creating effective and proactive maintenance plans. A good property manager can also help your corporation save money, be instrumental in conducting efficient and effective board and owners meetings, satisfy not only on-going day-to-day maintenance requirements but also envision future maintenance needs. You want to hire a property manager who is able to effectively oversee daily operations, respond to owner complaints and hire/monitor trades for maintaining common areas and amenities. The right property manager can be the best investment a condo board can make for their community.

Making the commitment to hire a particular property management company can be difficult without the sufficient information needed to make an informed decision, so it's important before you conduct interviews that you have a list of questions written out that you'll be asking candidates. You should also have an idea of exactly what type of property manager you're looking to hire. How do you go about finding that perfect management firm? Here are some key aspects to look for to get a better idea of their experience, personality, professionalism and communication skills.

- How long has the firm been managing condominium corporations?
- Is the firm registered and licensed with CMRAO? You can check this at [www.cmrao.ca](http://www.cmrao.ca)
- How many managers in the firm hold a General Licensed from CMRAO? Do they also have an RCM designation through

ACMO (Association of Condominium Managers of Ontario)?

- Is the firm ACMO 2000 certified? You can check this by going to [www.acmo.org](http://www.acmo.org)
- Contact your area CCI chapter (Canadian Condominium Institute) for guidance.
- Inquire about the firm's accounting practices, budgeting and reserve fund planning experience, communication, software, website, typical response time to calls and emails, emergency services, data storage etc.
- What services are included in the proposed monthly management fees? While property management fees are important they must be viewed in light of what other firms are charging, the scope of services provided and the quality of those services. The company you hire will be stewarding one of your biggest assets and the last thing you want to do is make your decision based solely (or even primarily) on who charges the lowest fees. Other common mistakes are failure to identify all the potential

additional fees allowed under the contract, as well as not making a true 'apples-to-apples' comparison of costs between property management companies.

- How many condo communities one manager typically handles at one time, and how often is the manager onsite at each individual property?
- Always ask for and check references!

There may be literally dozens of other questions you may want to ask prospective property managers during a hiring interview. The actual face-to-face interview should be held at the property manager's office, providing the opportunity for board members to meet and talk to staff members of the property management company. Do plenty of "comparison shopping" when hiring a property manager. The difference between an effective and an ineffective manager will have a huge impact on the success of your community, so hire a good one!



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*Serving your condo community.*





**Ashley Lamb**, BA Econ.  
Sales Representative  
Barrie Condo Corner

## Questions to Ask Before Buying

*Q: I am currently looking at purchasing an attached townhouse condominium unit. What type of questions should I ask my realtor about the condominium corporation where the townhouse is situated?*

Below are my top five tips for what you need to know before you buy.

1. Ask your Realtor to make any offer conditional upon you and your solicitor obtaining the Condominium Documentation of the Condominium Corporation. This would include the Status Certificate, the Declaration, Description, By-Laws, Common Elements, Rules and Regulations, and the most recent financial statements of the Condominium Corporation.
2. Getting a better understanding for the financial status and the reserve fund of the corporation should be of utmost importance. This you will find in the Status Certificate along with any possible judgements.
3. It would be a good idea for your Realtor to find out if the corporation is planning any exterior renovations on the complex and how that may affect the reserve fund moving forward.
4. Get a better understanding for the construction of the townhouse. Are the attics open and attached with your neighbours? Who owns the plumbing between the walls? What is the sound proofing like between units?
5. In a condominium townhouse complex, the owner has exclusive use of the exterior of the property. That means that the owner does not own the outside of the unit and therefore not allowed to make any alterations without consent of the corporation. If you are looking to put on a deck, wish to fence in the yard, plant a flower garden or install an automatic garage door, you will need to seek board approval prior to doing so. Make sure you ask your Realtor about the rules and regulations of the complex and have them reach out to Property Management if there is something particular you would like to do to the exterior of the property after you move in.

# CCI HURONIA

## SEPTEMBER 2019 EVENTS



### CCI Huronia AGM & Wine and Cheese

September 20, 2019 at 5:00 p.m.  
Liberty North, 100 Caplan Avenue, Barrie

*CCI Huronia will hold their AGM on September 20<sup>th</sup> followed by Wine and Cheese. An opportunity for fellow condo directors, property managers, professional and conference exhibitors to mix and mingle.*

Registration is complimentary for CCI Huronia members but is required. Registration includes one complimentary drink ticket and hors d'oeuvres. Registration forms are available [here](#).

### CCI Huronia Condo Conference

September 21, 2019 from 8:00 a.m. to 3:00 p.m.  
Liberty North, 100 Caplan Avenue, Barrie

*CCI Huronia's Annual Conference is now being held on a Saturday. Topics include guest speaker Dr. Susan Scott from Lakehead University who will be providing us with guidance on managing conflicts and creating consensus. We will also be having a panel discussion with representatives from condos who have been able to create amazing communities. Learn how they did it! Join us for our ever popular Rapid Fire Panel and Caselaw Update as well as our new Town Hall Question and Answer Period.*

You can submit questions to CCI Huronia by email at [admins@ccihuronia.com](mailto:admins@ccihuronia.com) by September 9, 2019, which will be answered at the conference. Registration is required and forms are available [here](#).

### North Bay Condo Forum 2019

September 28, 2019 from 9:00 a.m. to 4:30 p.m.  
Holiday Inn Express, 1325 Seymour Street, North Bay

*Topics Include: Legal Framework of a Condo and Director's Duties, Avoiding Costly Mistakes on Status Certificates, Effects of the Changes to the Condominium Act on Condo Management, Fire Code Update, What Happens When You Don't Use your Reserve Fund Properly, Accounting, Finance & Audits, and a Review of Condo Cases from the Courts and Tribunals.*

Registration is required and forms are available [here](#).