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By the time you read this, you will probably be having the same thoughts as I am right now: Where did the summer go? Notwithstanding that the summer has seemed to fly by, I hope that all members of our condominium community took some time during these beautiful months to relax, unwind, and enjoy all of the delights that our region has to offer from the gorgeous sandbanks in Picton, Prince Edward County, to the summer light festivities on Parliament Hill, and everything in between.

As the summer winds down, it is also time to make plans for the Fall. CCIEO has an exciting line up of events coming up over the next few months.

On September 28th, CCIEO is hosting the ever-popular "Meet the Experts". This is a terrific opportunity

Mark your calendars right away for the CCIEO AGM which will be held on October 19th. The free seminar to be held in conjunction with the AGM is one you will not want to miss: How to Chair an AGM. This year, Ottawa lawyer Jim Davidson will share some of his own tips and tricks on how to make sure that your AGM is effective, efficient, and productive. This is an evening that will provide not only education and entertainment, but also your opportunity to get involved in your local CCI Chapter.

The two day Director's Course (this session held in Ottawa) is scheduled for November 19th and 20th. This course is always a sell-out, so be sure to register early to save your seat. Following on the heels of the Director's Course is the Annual CCIEO/ACMO Kingston Conference and Trade Show on November 25th.

“ CCIEO has an exciting line up of events coming up over the next few months.”

to bring all of your burning condo questions to a panel of local experts, and pick their brains for ideas and tools on how to solve your sticky situations.

October 15th will be our Kingston one day directors training course.

Your CCIEO Board of Directors has worked hard to try and put together an exciting lineup of fall events. We have also received several suggestions for upcoming topics, including a session on budgeting and financial statements. We hope to be able to incorporate most, if not all, of your suggestions when we start to plan our 2017 events. Our local chapter is as vibrant as our community, and we are grateful for all our members' participation and suggestions. We look forward to seeing you at the upcoming events, and, of course, the AGM! Keep your eyes peeled for your AGM package!



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Rod Escayola

The age-old problem of... aging!

The old adage goes that age is a question of mind over matter.... if you don't mind, it doesn't matter. Unfortunately, this is not entirely true in the condominium world. Aging simply cannot be ignored. Whether we are referring to the aging of the corporation's facilities and equipment or the aging of the population occupying the condo units, each brings different challenges. These must be addressed proactively, realistically and with an open mind.

The first condominium corporation in Ontario was declared almost 50 years ago. Naturally, the aging of infrastructure requires planning and ongoing vigilance. These themes are addressed by both Christopher Lyon (of Laviolette Building Engineering) and by Yawar Khan (of Integral Property Management). While we could have focused on countless systems requiring some tender loving care, our article from the Ortam Group focuses on the importance of inspecting building façades. If there is one lesson to take away from all of these is that it is never too early to prepare for the inevitable.

Our infrastructures are not the only ones aging. So are our demographics. This too requires planning and preparation. It also requires tact and open-mindedness. In the legal corner of this edition, the lawyers of Elia and Associates teamed up to present an amazing piece on the challenges and obligations of corporations when dealing with an aging population and with disabilities. We were also able to squeeze in a short piece on things to keep in mind when contemplating the installation of a defibrillator in your condominium complex.

We hope you will enjoy this issue, now and in the years to come. Like good wine, we expect it to age well...

We invite you to provide us with comments, questions and stories for future publications. This is your magazine. Tell us how you feel about it and help us share your successes and lessons learned. I personally offer to help you draft your article with you. Don't hesitate to contact me.

Following our expansion to all of Eastern Ontario, we have updated our LinkedIn and Twitter pages!

We now invite you to follow us on LinkedIn (at CCI Eastern Ontario) and on Twitter (at @cciEastOntario).

Rod Escayola is a partner with the law firm Gowling WLG in Ottawa.

Contributing to CCI Condo Contact Editor's Contact Information

A benefit of CCI membership is the opportunity to share perspectives with one another by contributing and reading articles in CCI-Eastern Ontario's quarterly newsletter *Condo Contact*.

If you are a condominium director, owner or manager, and have a unique tale to tell or advice to relay to other condominium boards, let us know! If you are a professional or represent a trade company offering services or products to condominiums and have a relevant article, let us know! The subject matter should be current, concise and helpful. Topics should relate to management and operation of condominiums and not be of a commercial nature.

ARTICLES MAY BE FORWARDED TO:

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By Christopher Lyons, A.Sc.T., Associate
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The Golden Age of Condominiums

How to properly prepare and plan for important capital projects

Are the shingles on your roof curled? Are your windows drafty and difficult to operate? Does the elevator too often breakdown? Is the wood siding faded and decaying? Does the pavement on the road leading through your complex appear deteriorated? Overall, is your condominium starting to appear aged and dated compared to those shiny new condominiums going up all over the city? If you said yes to some or all of these questions, then chances are you live in an aging condominium, a condominium that is now likely over 30 years old.

Just like us, buildings eventually deteriorate with age, regardless of how well we maintain and take care of them. In general, when a condominium reaches a certain age, usually somewhere between 30 and 40 years of age, it will enter a critical period in its life cycle when multiple major common elements will be coming due for renewal. I like to refer to this time frame in a condominium's life as the "Golden Age", since Owners will encounter the largest and most expensive capital renewal period in the life of the complex.

The Golden Age

During the Golden Age of a condominium, Owners, Boards of Directors and Property Managers will all be challenged with undertaking multiple major capital renewal projects during a very short time frame, since many building elements have a similar lifecycle. Some of these projects will likely include major repair, restoration or complete renewal of the following elements:

- In a typical multi-unit residential building, we have multiple natural occurrences, and man-made building



systems, which impact air pressures, and thus air movement within suites and the building as a whole;

- Windows and doors
- Roofs
- Exterior siding and trim
- Exterior Sealants
- Pavement
- Concrete and brick
- Elevator systems
- Building mechanical & electrical systems
- Modernization of interior finishes
- Modernization of interior finishes

Prior to reaching this Golden Age of a condominium, Directors will need to prepare and plan well in advance, to ensure success during this renaissance period of the condominium's life. Careful planning and preparation for these projects in advance will help to ensure that all capital replacement projects can be afforded when they become due, and work can be undertaken to minimize disruption to everyone in the complex. The following three recommendations will contribute to the success of capital projects during this Golden Age.

Frequent Updates of the Reserve Fund Study

Your condominium's Reserve Fund Study should identify all future major capital replacement projects and the year(s) in which they are budgeted to occur, over a 30 year period. Although not all projects will eventually take place when

specifically budgeted for in the Study, the Study should be used as a guideline for condominium Board's to prepare for these projects.

As a condominium approaches the Golden Age, it will be important to ensure that the budgeted costs and timing for replacement for major common element renewal projects included in the Reserve Fund Study are as accurate as possible, to ensure that these projects can be afforded when they are eventually required.

To achieve this, it is recommended that condominiums update their Study more frequently (i.e. every year or two, depending on the magnitude and extent of the impending projects), several years leading up to forecasted multiple major common element renewal projects. More frequent Study Updates beyond the minimum three years required by the *Condominium Act* during this time frame, will help to ensure that the timing and budget costs for all upcoming major capital replacement projects included in the Study remain as realistic and as current as possible.

Establish a Preliminary Scope of Work for Major Capital Projects

Establishing a preliminary scope of work for major capital replacement projects in advance of the work commencing will serve to assist the Board in preparing for each project and help minimize complications leading up to and during the project. Furthermore, establishing a preliminary scope of work well in advance of a project will assist reserve fund planners in estimating budget costs that are more specific to that project, so that more accurate budget costs can be determined and included in the Reserve Fund Study when performing Study Updates.

To establish a preliminary scope of work for a major project, the Board should, in general terms, ask themselves what the project will involve and how it is likely to be executed. It is highly recommended that the Board seek the advice of an expert, such as a professional contractor, engineer and/or architect, as applicable, when performing this exercise. In addition, some preliminary research for suitable replacement products should also be performed, during this exercise. For example, does the Board want to replace the existing wood windows with like products or would they prefer lower maintenance PVC windows that will not require regular repainting? The cost variations for both product choices will have varying impacts on the Reserve Fund Study, so it is important to ensure that the Board's preferences are reflected in the budget costs to be included in Study Updates.

Once a preliminary scope of work has been defined for a major project, it should be documented and communicated to the property manager and reserve fund planner.

Consult with the Experts

Consulting with experts such as professional contractors, engineers and architects is essential to the Board's successful

planning and implementation of any major capital renewal project.

Experts can provide the Board with invaluable assistance and a wealth of information during the planning of a major project, since they are often involved in undertaking this work with many different clients on a regular basis. They can assist the Board in determining the requirements for the project by developing a clearly defined scope of work, specifications and accurate budget costs for the project. In addition, they can also advise the Board on how the project will impact the condominium residents. Indeed, major capital renewal projects can be very disruptive to the people living there, so consulting with these experts will serve to keep the Board and owners well informed and well prepared for the eventual work.

Executing a major capital renewal project can be overwhelming for most condo Boards, but these experts will help guide the Board through the entire process and will serve to ensure that the work is completed in a professional manner, so as to limit the disruption to the owners during work and the risk of any future performance problems with replacement building elements and/or products.

Since the experts are current with the most up to date building materials and construction techniques, they can help the Board determine the most suitable replacement products and/or materials to be used and ensure that best building practices are observed during the project. This will provide the Board and owners with reassurance that the renewal work will provide the condominium with long term reliability.

Conclusion

It's never too late to prepare, so if you're a Board member living in an aging condominium that's approaching the Golden Age, with multiple capital renewal projects on the horizon, my advice to you is to start planning now! Seek the advice and assistance of the experts and begin the process of determining the work involved for each project, so that project specific budget costs can be incorporated into your next Reserve Fund Study Update. Update your Study more frequently in the years leading up to these projects and engage the services of an expert to help guide you through each project.

Getting through this renaissance period in condominium's life cycle will be challenging, but it can also be very rewarding. ■

Christopher Lyons is a senior technologist and partner with Lavolette Building Engineering Inc. and its sister company Paterson Group Inc. Lavolette and Paterson perform a wide range of consulting engineering services for a variety of clients, with Lavolette focusing on post-construction Building Envelope Engineering and Structural Engineering services, primarily for condominium clients. Chris is also a director of the Ottawa and Eastern Ontario chapter of CCI.

AGING IN CONDOMINIUMS

By Patricia Elia, Eric Pelot and Caroline Karalasingham

Elia Associates is a condominium law practice providing legal services to condominium communities across the province of Ontario with offices in Ottawa, Toronto, Barrie and Oakville.

Condominium corporations in Ontario, like many other sectors and industries, have turned their attention to aging demographics. According to the Ontario Ministry of Finance's Population Projections Update for 2015 to 2041, "the number of seniors aged 65 and over is projected to more than double from 2.2 million, or 16.0 per cent of population, in 2015 to over 4.5 million, or 25.3 per cent, by 2041." This demographic trend is something that many condominium corporations are seeking to plan and prepare for.

Additionally, there is the issue of aging infrastructure. The first condominium corporations in Ontario were declared under the first *Condominium Act* passed in 1967, almost 50 years ago. With aging infrastructure, condominium corporations are repairing and maintaining in accordance with obligations under the *Condominium Act*, 1998 (the "Act") and are simultaneously asking themselves how the new accessibility standards will affect their reserve fund projects and whether accessibility retrofits will be required.

Although it is helpful to think of accessibility in the context of aging, it is important to remember that age and disability are not synonymous. Accessibility may be important for residents, owners, Directors and employees at any age. Further, many seniors have no disabilities. So when communicating with owners, residents, employees, directors and property management (stakeholders), it will be important for condominium corporations to avoid referring to aging residents as the target of accessibility measures. This could be considered differential treatment based on age.

Legislation on Accessibility

The two key statutes on accessibility that apply to condominium corporations in Ontario are the Human Rights Code (the "Code") and the *Accessibility for Ontarians with Disabilities Act, 2005* (the "AODA"). The Code prohibits discrimination on a number of different grounds, such as age, race, gender, sexual orientation and disability. Under both the Code and the AODA, "disability" is defined as any degree of physical disability or infirmity, a condition of mental impairment, or a mental disorder.

The Code

The Code provides the right not to be treated differently on the basis of one of the protected grounds, and to be accommodated by a condominium corporation, unless this would result in undue hardship.



A recent human rights case expands on accommodation in the condominium context. In *Simcoe Condominium Corporation No. 89 v Dominelli*, 2015 ONSC 3661 (CanLII) ("Dominelli") the court clarified the role of the condominium in considering accommodation requests, and the standards of evidence which should be presented by a claimant.

In *Dominelli*, an owner kept a dog called Peaches in her unit which was over the 25-pound weight limit in SCC 89's rules. When SCC 89 asked the owner to remove Peaches, she advised that it was a service dog as part of her job to assist children with disabilities.

The board met with the owner and advised that the accommodation was only required for dogs servicing a resident. The owner requisitioned a meeting seeking to amend the rule restricting the size of pets but was unsuccessful.

The owner then claimed that the dog was her personal service pet. SCC 89 had asked for medical documentation to support her request for accommodation and to meet to discuss her disability requirements. The owner refused to meet with the board but agreed to provide medical documentation from her physician.

The board was not satisfied with the information in the medical documentation, and repeatedly sought permission to speak with the owner's physician to ask for clarification. The owner refused and the board was required to refuse the accommodation.

SCC 89 commenced a compliance application. The Court held that the owner had not proven her disability and therefore there was no obligation on SCC 89 to accommodate her. Further, the owner was required to comply with the rule and to permanently remove Peaches from the property.

As a result of this decision, when a condominium board receives a request for accommodation, the board must

conduct reasonable due diligence and bear in mind that the claimant is responsible for establishing the existence of a disability. Recently, we have been disturbed by requests for service pet accommodation based on the recommendation of an unqualified expert such as a podiatrist. The board has the right to inquire and determine the need for accommodation based on clear medical evidence.

The board should develop an articulated policy confirming a commitment to compliance with legislation, such as the AODA and the Code, and develop a process that implements the policy in clear steps to ensure transparency of process for both parties and avoidance of bias.

In developing and implementing the policy, boards should be setting out their process for considering accommodation requests, including the information that a claimant will need to provide. The investigation process may include addressing the following questions:

1. What is the medical diagnosis, disability or other grounds for the requested accommodation? According to *Dominelli*, a disability under the Code “requires medical evidence, a diagnosis of some recognized mental disability, or ‘working diagnosis’ or ‘articulation of clinically-significant symptoms’ that has ‘specificity and substance.’” A bare assertion of pain or anxiety is not a mental disability.

2. Why is the requested accommodation required in relation to the disability? In *Dominelli*, the owner claimed that she had a “strong bond” with Peaches, though there was no evidence that a smaller dog could not be used as a service pet. Similarly, some owners with mobility issues may want a powerful or fast scooter when a less powerful one may be adequate and safer.

3. Is the medical expert qualified to providing evidence? In *Dominelli*, the medical expert was not the claimant’s family physician, nor an expert in treating her condition, but was someone she “used in Barry”.

4. Is the evidence provided by the medical expert neutral and objective, or is the medical expert advocating for the claimant? This may impact the credibility of the medical expert’s evidence, and whether the claimant will need to obtain supporting evidence from an alternate, more objective expert.

The human rights policy should be complimented by an information management or privacy policy, which manages expectation of privacy in accordance with provincial requirements, federal standards and the Act. We strongly recommend a clear and confidential method of consent, use and disclosure of personal information.

The AODA and its Regulations

Further to the Code, the AODA is part of the Government of Ontario’s plan to develop, implement and enforce accessibility standards. Goods, services, facilities, accommodation, employment, buildings, structures and premises will need to be accessible on or before January 1, 2025. Currently, Ontario Regulation 191/11 (“Regulations”) under the AODA sets standards for each of information and communications, employment, transportation, and the

design of public spaces and customer service. An accessibility standard may apply only to a person or organization that:

- 1 provides goods, services or facilities;
- 2 employs persons in Ontario;
- 3 offers accommodation;
- 4 owns or occupies a building, structure or premises; or
- 5 is engaged in a prescribed business, activity or undertaking or meets such other requirements as may be prescribed.

The AODA and its regulations set accessibility standards that apply depending on an organization’s number of employees. Organizations may include condominium corporations. Most condominium service providers will have to ensure compliance for their employees and their customers. Organizations with between 1 and 19 employees will need to comply with new AODA accessibility standards. For example, these standards apply to any condominium corporation with a superintendent who is an employee of the corporation.

Corporations with no employees are exempt from compliance with these standards. There are additional requirements for larger organizations (20 or more employees) but these would not affect most condominium corporations.

AODA Standards for Condominium Corporations or their service providers with 1 to 19 Employees

Organizations (including condominium corporations and their service providers) with 1 to 19 employees are required to comply with the AODA. The deadlines to comply with the following requirements have already passed:

- 1 Provide accessible customer service (e.g., welcoming service animals);
- 2 Provide and make accessible emergency and public safety information for workers, owners and residents;
- 3 Train employees and board members on accessibility laws; and,
- 4 Providing an accessible way for people with disabilities to provide feedback to the corporation.
- 5 Developing, implementing and maintaining policies governing how the organization will achieve accessibility by meeting the requirements in the Regulations and how it provides services and facilities to persons with disabilities.

By January 1, 2017, employment practices will need to be accessible, including hiring and performance management practices and making work-related information accessible to employees. For example, this includes accommodating candidates during the interview process if necessary. Condominiums procuring services should ensure that their service providers are fully compliant with AODA requirements.

Further, certain types of information will need to be made accessible by condominium corporations upon request by employees (if any), owners or residents. This includes any documentation that is made “publicly available” and in the condominium context may include information circulated to the owners and residents, information that can be accessed under section 55 of the Act and status certificates.

As a practical matter, software often includes accessibility features that can make this an easy task. Documents prepared in Microsoft Word or Adobe Acrobat can be made accessible by using their accessibility checkers. For example, when preparing a document in Word, it is good practice to use the heading “styles” and create tables of contents to improve readability by assistive devices. Further, using black text on white background in a neutral font (such as Arial) and using at least 12-point fonts makes the document more readable for those who might have visual impairments.

By January 1, 2018, condominiums with between 1 and 19 employees will need to make **new or redeveloped** public spaces accessible. Redevelopment means “planned significant alterations” and excludes maintenance. Of particular relevance to condominium corporations, the AODA standards apply to new or redeveloped parking lots and structures.

Common Element Retrofits

Given the foregoing, one of the key questions is: **When do the physical common elements need to be made accessible?**

The corporation may need to retrofit its common elements if a stakeholder has a disability and requests accommodation under the Code. With respect to the corporation retrofitting units, you may recall that earlier interpretations of the AODA had suggested that unit retrofits may be required. But our understanding based on discussions with

the Accessibility Directorate of Ontario, is that unit retrofits are the responsibility of the unit owner.

There is no definitive standard in that case, so accommodation is highly individualized. Further, whether or not there is a request for accommodation, a condominium corporation will need to comply with the standards set out in the AODA for spaces that are new or redeveloped after January 1, 2018.

Accessibility retrofits may be costly. Condominium corporations may be in a difficult position because these retrofits may be required by law, and difficult to fund if unplanned. Accordingly, condominium corporations may wish to be proactive and include an additional budget line amount in their reserve accounts to cover the cost of retrofitting the common elements to make them accessible on a proactive basis, whether anticipating individual accommodation requests or compliance with AODA standards after 2018. Your engineer is an asset in this regard.

The main advantage of this approach is that the funding can be done over a few years in order to avoid the need for a special assessment or a sudden increase in the common expense contributions. Cash flow particularly adds value for communities where owners have fixed incomes.

When making an accessibility retrofit, a condominium corporation may be making a “change” under section 97 of the Act. According to section 97(1), the corporation is permitted to carry out its obligation to maintain the common elements using materials that are “*reasonably close in quality to the original as appropriate in accordance with construction standards*” and applicable laws including the Building Code of Ontario which will incorporate AODA standards. This work is deemed not to be an alteration, addition or improvement. Under section 97(2), the corporation may make changes that are legally required, including compliance with accessibility requirements.

Condominium and Owner Responsibilities

Generally, condominium corporations are responsible for providing accessible common elements so that owners and residents can access their units and common element amenities without barriers. This is also usually a common expense, so all owners contribute to the funding of accessible common elements.

On the other hand, owners are responsible for removing barriers within the unit boundaries at their own cost. This is because condominium corporations are only required to manage the common elements and their assets. A similar argument may also apply where an owner or resident requires changes to exclusive use common elements. One solution may be an agreement pursuant to section 98 of the Act, according to which the owner may make an accessibility-related modification at their own cost.

Some condominiums are receiving requests from residents or family members to assist with residents who may require additional care because of mobility or mental health issues, such as dementia. Again, these disabilities may or may not be related to age.



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Requests for assistance may include the following, and condominium corporations should consider involving legal counsel to advise on related risks:

1. Requests to assist residents within the unit – A condominium corporation needs to be mindful not to take on additional responsibilities beyond what is stipulated in the Act and its Declaration, By-laws and Rules. Owners or residents may require assistance within their unit, but the corporation is not an assisted living facility or care provider. There are many resources available to assist residents and the corporation can provide related information to owners and residents to alleviate the use of the corporation's resources.

For example, "A Guide to Programs and Services for Seniors in Ontario" is one such resource and is available in many languages including French and English. This guide provides information about programs and services for assisted living, many of which are available regardless of age. This guide includes information on caregiving, finances, health and wellness, housing and transportation needs. A copy can be obtained or ordered through <www.ontario.ca/seniors>.

2. Requests for communication with family members or care providers about a resident – While there are obligations for family members to support each other, including children's obligation to support their parents if needed, *the obligation does not extend to the corporation*. A corporation should not take on additional obligations and risks. Condominium corporations should also be mindful not to assume that relatives are the legal representatives of the resident, unless the necessary legal documents authorize decisions on behalf of a resident.

3. Allowing care providers into the building – Ideally, owners should control access to the common elements. If this is not possible, the corporation may consider allowing care providers into the building on behalf of the owners, as well as due diligence steps such as a sign-in sheet, registered fobs or checking the identification of any care provider that condominium staff grant access to. The community may wish to avoid strangers wandering around on the premises.

The condominium corporation is the occupier of the common elements for liability purposes. Thus, the corporation should include a regular review of the common elements for tripping or other hazards and take prompt steps to correct these when discovered.

Further, if there are any unsafe conditions within the units, the corporation may become involved at that point and require the owner(s) and resident(s) to take steps to comply with the safety requirements in the Act. Any safety breaches within the unit will likely need to be corrected at the owner's cost.

Training under the AODA

As mentioned above, the deadline for implementing AODA training for corporations with 1 to 19 employees has already passed.

According to section 7 of the Regulations under the AODA, employees, persons participating in the development of policies, and any person providing services or facilities of or for an organization with

at least one employee must be trained on the standards under the AODA and the Code as soon as practicable. Condominiums providing services and facilities may also need to provide customer service training pursuant to section 80.49 of the Regulations.

This means that board members and employees (such as a superintendent) will likely need to be trained. Further, the condominium corporation's service providers (such as property management) will likely also need arrange for their own training.

The Ontario Human Rights Commission has prepared training videos and interactive quizzes that satisfy the section 7 requirements. It may take about 20-40 minutes to complete the training, available at the following web address: <<http://www.ohrc.on.ca/en/learning/working-together-code-and-aoda>>.

Aging Capital Assets

In managing aging capital assets, a board should proactively seek the assistance of engineers and perhaps consultants and/ or designers who are familiar with the *Building Code* requirements that will make spaces more friendly and accessible through creative design and material appreciation. Further, thinking ahead and combining capital asset replacements so that AODA standards can be integrated may make economic and practical sense.

For example, making curbs wheelchair accessible and painting them to improve visibility can be incorporated into a repaving project for efficiency. Similarly, one of our clients worked closely with a designer during a recent retrofit to ensure that its lobby was helpful for individuals with accessibility concerns including visual impairment.

As buildings age, it is critical that reserve funds are kept up to date and are fully funded. At a certain age in the life cycle of a building, the building will experience the need to replace costly capital assets such as elevators, roofs, parking garage membranes etcetera. To be underfunded can put significant pressure on the resources of individuals on fixed incomes. Thus, being proactive and saving over time can lessen or eliminate the negative effect. In addition, many corporations are relying on loans to supplement underfunding with success.

The restrictions imposed on ownership usually deal with what can be done on common elements. Owners are usually left to fully enjoy their unit – provided that they do not cause a nuisance which negatively impacts the neighbour's enjoyment of their own unit. Still, a growing exception to this is the corporation's ability to prevent smoking even in one's units.

Fortunately, in the condominium context there are many resources to assist in developing meaningful solutions as buildings experience the effect of the passage of time and people present needs that will have to be accommodated. In addition, there are many resources available in the private and public domain to persons who require assistance regardless of their age. Being proactive is the first step to helping your community to keep up with changes in the law and the needs of people in your community. ■

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Senior Living in Condominiums: 7 Things that Condo Corporations Need to Know Right Now



By Karen Phung

It is no secret that Canada's population is aging.

We have all heard the news that more and more baby-boomers (born between 1946 and 1965) are retiring, or will be retiring, in the coming years. Right now, one in seven Canadians are over the age of 65. In 20 years, that number will increase to one in four. We also know that dementia, one of the most widespread mental health illnesses affecting this generation, is also on the rise. But what impact, if any, do these issues have on condominium corporations?

Here are 7 things condominium corporations need to know about Canada's aging population, and how seniors are impacting the condominium landscape:

1 The number of seniors living in condominium buildings will increase

It is common for seniors to downsize their homes after they retire. The kids have moved out, there is more time to travel, and there is no longer a need (or a desire) to own and maintain a house.

Living in a condominium building is appealing to seniors because they come with fewer responsibilities and greater convenience. Seniors can rely on others for maintenance, repair and security services. Access to amenities is faster and more convenient. Limiting one's living space to a single floor and accessing an elevator makes it easier for those with sight, strength or balance problems to reduce their risk of injury. Condominium corporations can therefore expect a growing number of seniors purchasing units with a view to enjoying these benefits. This also means that the number of condominium



owners suffering from age-related mental health illnesses will also increase.

2 Seniors are living longer and more independent lives, which may translate to greater issues for condominiums

Not only is Canada's population aging, but seniors are also living longer and more independently (i.e., preferring to live on their own rather than with family members or in a care facility). Furthermore, a number of seniors have no children or other family members to care for them in their later years.

A desire for independence, combined with an inevitable decline in physical and cognitive functioning, may translate into greater problems for condominium corporations including access issues (i.e., to one's own unit and amenities), the undesirable use of the common elements (such as monopolizing or loitering), unhealthy dependency on property managers, and illness and/or abandonment. Condominium corporations need to be mindful of the kinds of issues that may arise when dealing with live-alone unit owners with age-related challenges.

3 Condominiums have a duty to accommodate physical impairments and mental illnesses to the point of undue hardship

Physical impairments and mental illnesses (including dementia), constitute disabilities under section 10 of the Ontario

Human Rights Code. Condominium corporations therefore have a legal obligation to accommodate these disabilities to the point of “undue hardship”. What constitutes “undue hardship” will depend on the individual facts and circumstances of each case.

Those belonging to the baby-boomer generation are known for their strong views of how they expect to live their lives after retirement. Their expectations about independence will bring increased demands on condominium corporations to respond to accommodation requests so that they may maintain a certain lifestyle and level of freedom.

Corporations may have to allow certain changes to be made to an individual unit, or to modify the common elements to accommodate a unit owner's disability. This may include installing accessibility ramps or sound-proofing rooms. In all cases, however, it means that Corporations must respond to all accommodation requests in a meaningful and timely manner. Who pays for these accommodations may not always be easily ascertainable.

4 Seniors with dementia and other mental illnesses may impact the way condominiums deal with compliance matters

Dementia may not only impact a person's memory and cognitive functioning, but it may also impair his or her day-to-day behaviour and conduct in the community. A unit owner who suffers from dementia may wander into another owner's unit without realizing it. He or she may cause noise, demonstrate aggressive or disruptive behaviours, and may also exhibit other inappropriate conduct such as hoarding.

However, enforcing compliance with the Act and the condominium's governing documents as against a person suffering from an age-related mental health illness is not as straightforward as enforcing against the habitual smoker or the music blaster from down the hall. There are laws that protect individuals with disabilities (in particular, the Human Rights Code), which may mean that strict enforcement may not be possible (or legal) in all situations. Although there is no one-size-fits-all solution to accommodation issues, condominiums must ensure they are meeting their obligations to avoid human rights complaints.

5 Condominiums need to establish who is responsible for paying for the accommodation

Condominium corporations will have to determine who is responsible for paying the bill for alterations or modifications that result from accommodation requests. Does the corporation pay the bill out of its operating or reserve fund, or can the amount be charged back to the unit in the same manner as common expenses? Under what circumstances should the corporation levy a special assessment?

Whether a condominium corporation can charge back the cost incurred for accommodation is determined on a case-by-case basis and largely depends on the nature of the request and what the condominium documents provide. Typically, if accommodation is made to a resident's own unit and is for his or her exclusive use, it will be the unit owner's responsibility to pay. If the accommodation requires a change to a non-exclusive use common element, such as installing a front entrance ramp, the corporation may have to foot the bill.

6 Condominiums need to be proactive, not reactive

Condominiums should adopt a proactive rather than reactive approach to these impending issues. Below are some things that condominium corporations should be doing right now:

- **Establish and implement appropriate policies and procedures for dealing with residents who have age-related disabilities that may need accommodation**

These policies should include protocols for information-gathering, submitting accommodation requests, responding to accommodation requests, obtaining consents, and involving third party professionals where necessary, etc. The corporation's lawyer should be consulted about the best way to draft and implement these policies, keeping in mind that these policies may change over time.

- **Encourage early disclosure of health-related needs and requests for accommodation**

The Corporation could create a standard form for recording this information. Senior residents should also be required to provide management with up-to-date contacts in the event of an emergency and in case consent is needed. This way, the corporation will be in a better position to anticipate problems and respond accordingly. This information could be included in the Owner's and Tenant's Information forms, in those buildings which use them.

- **Know your resources**

There should be a protocol in place for contacting the appropriate family member, third party medical professional, or the police. There are a number of resources available to condominium corporations and their residents (including Community Care Access Centers, Mobile Crisis Intervention Teams, and Geriatric Mental Health Services). Condominiums should also take steps to familiarize themselves, senior unit owners and their families of these community resources in cases of emergency or non-emergency.

- **Encourage small changes that will have a big impact on resident safety**

Making small changes to a senior resident's unit may have great impacts on their safety and day-to-day living. Some examples include installing safety rails in the shower, applying non-slip mats in the tub, and using fire-safe appliances with automatic shut off features.

- **Document Everything**

Corporations need to implement a protocol for maintaining a detailed and consistent record of all accommodation requests and the Corporation's response to those requests. Such a record will be important to demonstrate the Corporation's efforts to comply with its legal obligations.

7 The time to prepare is now

Condominium corporations should not wait to establish and implement the appropriate policies and procedures for dealing with these issues. As we move into a time where the demands on condominium corporations is becoming greater than ever before, condominiums should be prepared to deal with these issues head on, and with the confidence that the right systems have been put in place. ■

The Importance of Building Facade Inspections

By Ortam Groupe Engineering Consultants



Regular facade inspections by experts in the field benefit everyone from the building's co-owners association to the residents and even passing pedestrians projects

The brick, stone, steel and glass exteriors of our urban residential and commercial high-rises create iconic vistas as recognizable as the skylines they are a part of. Keeping the exterior in good shape is the responsibility of a building's co-owners association or managing board. Building facades should not just look good but they should function well, too. They should protect the structures they cover and should also be safe for passersby. If you are a member of a co-owners association for a condominium building five storeys or taller, then you know the importance of regular facade inspections.

Regular inspections are essential to a building's general maintenance. A **facade inspection** can identify property issues before they become problems. Knowing what the existing and potential issues are is crucial to ensuring the safety, aesthetics and value of a building. This is especially important because a home is often a person's largest lifetime investment.

The When and How of Facade Inspection

Structural engineers generally recommend that the facade

inspection be done regularly if a building is in good condition. In Ontario, such an inspection would take place at least every time a comprehensive reserve fund study is done. Reserve Fund studies are due every three years, but the comprehensive one is due every six years. In the context of the comprehensive Reserve Fund Study, an engineer is typically required to physically inspect the property. He or she should inspect the façade.

Additionally, if a building is in poor condition, then the recommendation is to have the facades inspected yearly. The inspector must be qualified by local jurisdiction to undertake **facade inspection**. This usually means hiring a registered architect or a professional engineer.

Signs of Deterioration to Look For

There are signs of deterioration visible to the naked eye that indicate a thorough and in-depth **facade inspection** by a professional is called for. These include signs such as cracks, rust stains, physical deterioration around balconies, and displacement of stone or concrete blocks or bricks.

Legislation Concerning Facade Inspection

In Canada, the National Building Code is the model that forms the basis for all of the provincial building codes. Some jurisdictions, such as Ontario, have created their own codes based on this model. The Ontario Building Code is administered by the Building and Development Branch of the Ministry of Municipal Affairs and Housing and was first enacted in 1974. According to the overview on its website, the Building Code is updated approximately every five years, and "Ontario regularly reviews and amends the Building Code to reflect changes in technology, address emerging public safety issues and to achieve government priorities." Essentially, the province's Building Code focuses on ensuring public safety in new construction by providing for uniform standards across the province. Prior to 1974, municipalities developed their own individual building codes.

What this Means for You

When it comes to high-rise condominium buildings five storeys or taller, facade inspections benefit everyone. The building's co-owners association and management will be satisfied the building is safe. Residents will be assured. Even people just passing by the building will be safe. Regularly inspecting your building ensures safety for all. You will be protecting the structure of the building, safeguarding the residents' investments, and potentially saving lives.

When it's time for your building's **facade inspection**, it is best to entrust the job to an engineering firm specializing in building inspection services. Look for one whose accredited inspectors have several years of experience under their belts. ■

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We are pleased to present the latest issue of the CCI National News (Summer Edition) for you to enjoy. The edition can be found in both print and web editions in PDF **HERE.**

Defibrillators in Condominiums

By Rod Escayola

It is well-known that the steps taken in the minutes following a cardiac arrest may make a difference between life and death. Defibrillators, if well maintained and properly used, can make a life-saving difference. Still, prior to installing such life-saving devices, condominium corporations should turn their minds to the challenges and obligations that come with them.

Study on surviving a cardiac arrest in high-rises

Earlier this year, the Canadian Medical Associate Journal published a study on the survival rate of patients presenting a cardiac arrest in high-rise buildings. The study was conducted in the City of Toronto and the Regional Municipality of Peel, which were selected because of their high population density. Sadly, the study concluded that the higher a patient was in a high-rise, the lower was the expected survival rate. The study concluded that this was due to the fact that high-rise buildings posed unique challenges for 911-initiated first responders, such as:

- Building access issues;
- Elevator delays; and,
- Extended distance between the emergency vehicle and the patient.

All of this contributes to longer times before the initiation of resuscitation manoeuvres.

The authors of the study concluded that reducing barriers to 911-initiated first responders may help improve the response time. Some of the recommendations made by the author included granting paramedics with access to a universal elevator key (as fire departments). Another one was to implement a policy which resulted in alerting building staff before the arrival of the first responders to allow them to facilitate/accelerate the first-responders' intervention. Finally, the author of the study recommended placing automated external defibrillators on specific floors, in the building lobbies or inside elevators to grant bystanders access to them.

Legal ramifications of installing a defibrillator in a condo

Under the *Regulated Health Professions Act*, the use of a defibrillator is a controlled act, which can only be performed by a health professional authorized to do so, unless it is performed in the context of rendering first aid or temporary assistance in the context of an emergency. Such an emergency situation is usually defined as a situation where an individual believes that another is experiencing a life-threatening event that requires the provision of immediate care.

Still, the question we often get is whether the decision to use (or not to use) a defibrillator attracts personal liability.

In Ontario, since 2007, the *Chase McEachern Act* (or the Heart Defibrillator Civil Liability Act) provides that someone, who in good faith, voluntarily and without reasonable expectation of compensation or reward uses a defibrillator on someone experiencing an emergency is not liable for damages that may result from this person's negligence in acting or failing to act, unless it is established that the damages were caused as a result of gross negligence.

That answers the question of whether a bystander is protected following the decision to use or not use the defibrillator in an emergency situation. But what about the corporation's decision to install a defibrillator?

The same legislation provides that, despite the *Occupiers' Liability Act*, any person who owns or occupies premises where a defibrillator is made available for use (in this case, the condominium corporation) and who acts in good faith with respect to the availability or use of the defibrillator is exempt from civil liability for any harm or damage that may occur from the use of the defibrillator unless:

- the corporation acts with gross negligence with respect to making the defibrillator available; or,
- the corporation fails to properly maintain the defibrillator.

Prior to the adoption of the *Chase McEachern Act* (and in addition to it) the Good Samaritan Act applied similar protections to anyone who voluntarily and without reasonable expectation of compensation or reward provides emergency first aid assistance at the scene to a person who is ill, injured or unconscious as a result of an emergency.

Conclusion

There is likely no legal obligation on a condominium corporation's part to install a defibrillator. Still, such a decision is an important one worthy of serious consideration. In the event a condominium corporation decides to install a defibrillator, the corporation should ensure it properly maintains it. The corporation and anyone using a defibrillator in good faith, in the context of an emergency, can expect to be protected from personal liability unless damages are caused as a result of gross negligence. ■

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Rod Escayola heads Gowlings' Condominium Law Group. He is the editor of Condo Contact and of Gowlings' condo law blog the Condo Adviser.ca. He also sits on the board of directors of his own condominium corporation. Rod co-founded the Condo Directors Group, a not-for-profit organization, providing a forum for condo directors to share knowledge and experience on a range of issues of common interest.

MANAGING AN OLDER CONDOMINIUM – KEY ISSUES



By Yawar Khan

The management of an older condominium corporation is very different from the management of a new or newer one. With many of Ottawa's condominium corporations reaching 30 years of age or older, it's imperative for the Board of Directors of these corporations to understand the keys to successful management of this type of asset.

Typically, at the 20 to 30 years post-construction mark, a condominium will require a number of major repair and maintenance projects that will put pressure on management, cashflow and owners. At this point in the lifecycle many key items need to be dealt with such as windows, doors, roofs, podiums, building envelopes and elevators just to name a few. These are important pieces to the proper functioning of a corporation and to the enjoyment of it by its owners but they are also very costly. Of course, regular day-to-day maintenance must also be done and the competition for scarce funds becomes intense. Without proper planning and foresight, older condominiums may be rushed to complete key projects and may not have sufficient financial capacity to deal with these urgencies before they become emergencies.

So what can Boards do to ensure that their condominium looks good, is well managed while dealing with future repair and maintenance requirements?

1 Annual and Future Planning

Every condo must prepare and distribute an annual budget to owners 15 days prior to the end of each fiscal year however most do not plan any further out than the next 12 months.

Certainly older condos, if not all condos, should be planning out at least three years ahead. Years 2 and 3 will certainly require some assumptions and will be less accurate than the budget for the immediate upcoming year. Still, this process will focus the Board



on thinking about what projects may be coming up and will ensure that condo fees are sufficient to meet all of the corporation's needs.

The annual plan will not only consider financial issues but should also ensure that not too many projects are scheduled for the same year and that all aspects of prevention, repair and maintenance are taken into account. This will help reduce disruption to owners when too many projects are ongoing and it may also allow the corporation to benefit from some savings if they are able to combine projects requiring similar equipment. Think of combining the caulking of windows in a highrise with the re-pointing of the mortar. That way, you only need to pay the mobilization of scaffolding once.

2 Project Management

The Board should use professional project management for large scale projects that are beyond the property manager's expertise. The property manager is responsible for the day-to-day management of your property and should focus on those tasks. When a property manager is asked to manage large projects their time is split and they lose focus on the day-to-day.

Additionally, they may not have the skills to understand the technical aspects of the project and so may not pick up on issues that might cause delays

or increases in the cost of the project. A project manager will develop a project plan with a timeline and will ensure that the project runs according to the plan and budget.

3

Cashflow Management - Reserve Fund

These are the years that the Corporation has been saving up for.

If past studies were accurate and the Corporation followed the advice of the engineers, then there should be sufficient funds to pay for all the major renovations and repairs that are required for older condominiums. The Corporation may have had to deal with surprises and sometimes the reserve fund is not as flush as it should be. In these cases, we recommend developing a cashflow spreadsheet to ensure that there is and will be enough cash to deal with all upcoming requirements. The spreadsheet should show the inflows and outflows of cash for each month over a two to three year time horizon. It should also take into account cash in the bank at any given point in time.

4

Communication

Effective communication between the Board, Management and Owners is key for the success of any condominium and even more so during construction projects or times of financial uncertainty.

Each year, the Corporation should notify owners of planned upcoming projects, the reason for them, the approximate cost and timeframe if possible. This will ensure a better understanding when projects occur and at the AGM when the audited financial statements are reviewed.

Boards should also plan regular information meetings as another channel to inform residents of issues and planned actions.

You simply cannot have too many communications.

All condominium corporations should follow the points mentioned above but certainly those Corporations whose aging infrastructure requires many projects and capital expenditures. Older condominiums must ensure that they plan well ahead and keep their buildings looking good to keep up with the competition of the newer condominiums being built today. ■

Yawar Khan is the owner of Integral Property Management. He has over 21 of years progressive management experience and a Master's of Health Administration degree from the University of Ottawa. Yawar actively manages five properties consisting of 922 units and oversees the operations of the remainder of the residential portfolio. His areas of expertise include financial management, governance, owner relations and operations. Integral Property Management manages a portfolio of over 100 condominium corporations in Ottawa and Gatineau.

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