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This publication also notifies members of the Eastern Ontario Chapter of events and services. The products and services advertised are not necessarily endorsed by the Eastern Ontario Chapter. Readers should conduct their own review of the products and services and seek legal and other professional advice on the particular issues which concern them.

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Thanks to our terrific membership, CCI-eastern Ontario has had a wonderful year.

As the days get shorter, and the weather starts to turn, many of us are also turning our minds to Annual General Meeting's. In fact, CCIEO's AGM was only a few short weeks ago. We had a tremendous turnout, and a fabulous presentation by Jim Davidson on tips and tricks for running a smooth AGM.

As we finish up our year, I want to thank our 2015/16 board for all the hard work, new initiatives, the launch of free seminars and the leap into social media. We have moved in leaps and bounds into these new frontiers.

A special thanks to Christopher Lyons and Rodrigue Escarole for their contribution to our successful team. We know we will be able to continue to count on them for support and valuable expertise and contributions to the Eastern Ontario Chapter in the future.

I also take this opportunity to welcome the newest additions to the Board: Kimberly Renwick and Richard Elia. We look forward to their ideas and contributions.

Your Board looks forward to continue to introduce new initiatives, and delivering more of what our members are asking for in the coming year. Your Board has just completed its first strategic planning session to put together the seminar and education events for the coming months. Check the website for a list of upcoming events. As a teaser:

- Check out the launch of Condo Strength, a new initiative running across the country for directors by Directors which is outlined in this Newsletter;
- Planned for the New Year will be our very successful seminar Lawyer, Guns and Money;
- Then we welcome new seminars, "Security, not just locks on the doors" and "No reservations about reserve funds". Check out our website regularly to see what you can look forward too.

Our fall directors course, a sell out with 145 attendees. We thank our sponsors Keller Engineering, Sleepwell Property Management, Raymond James and Luminex who will be contributing to the week-end course.

November also has us working together with ACMO to offer the 3rd annual Kingston ACMO/CCI-EO conference. Another opportunity to stay current and educated on what is relevant in the condominium world.

Please remember to make use our new Eastern Ontario directory which is now on line through our site. Search our professional and business directory for CCI eastern Ontario members.

We welcome volunteers, to help with our seminars and new initiatives. Please reach out to us if you want to help out.

Have a great fall season, enjoy the calm before the Christmas rush!



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- Don't miss out on promoting your company to the members of the CCI-Ottawa Chapter.
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- The Newsletter Advertising Rate Sheet may be found on the our website at **CCI-EasternOntario.ca**



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A year in review....

Dear readers,

As you saw in Nancy's message, your local CCI chapter recently held its AGM. On that evening, we were able to look back at my past year as your editor. For those of you who were not able to attend, I take this opportunity to give you a snap shot of our common accomplishments.

Our biggest change has been, without a doubt, the digitalization of your magazine. Not only has this allowed us to produce the magazine at much lesser cost to the members, it has also allowed us to widen and facilitate its dissemination across our greater geographical territory, which now includes all of Eastern Ontario. It allowed us also to go full-colour and to insert hyper-links. I didn't do all of this alone. In fact, our administrator, **Julie Klotz** is really the one doing all of the heavy lifting. She deserves most of the credit. Her and her team have given this magazine a refreshed and sleek look!

I am also proud of having lead CCI into the digital era with our LinkedIn and Twitter accounts. I hope many of you will join us in cyber space. Visit our pages and follow our accounts. **Mike Lewicki** will continue to spread our digital wings on both platforms.

I am particularly proud of our recent "Special Editions". You may recall that our summer edition was focused on smoking in condominiums. The positive response to this Special Edition was such that we decided to repeat the experience with our last edition, which focused on aging condominium.

In the present edition, again, we decided to issue another *Special Edition*, focused on the *First year in the life of a condominium Corporation*. **Jim Davidson** (lawyer with Nelligan O'Brien Payne) provides an extremely useful and comprehensive checklist to keep in mind during the first year. **Chantal Wegner** and **Gian-Luca Porcari** (Engineers with EXP) focused their piece on the questions surrounding warranties in new condos. Our main piece, this time around, comes from **John Andrews** (Manager with Apollo Property Management). He shares with us the challenges and rewards of turning a condominium project into a solid and healthy homes for decades to come. It is a very inspirational piece. **Scott Hill** (from 3D Security) provides a solid piece on security audit and how to make your complexes as safe as possible. I'm also presenting a piece on a condo's first year deficit. Finally, **Constance Hudak** presents a new initiative by CCI called Condo Strength, a new initiative by and for directors.

I hope you will enjoy this edition. As usual, I invite any comment or suggestion you may have. More importantly, I urge you to share with me any stories you would like published. Be it an important project, a challenge you surmounted, a lesson you learned the hard way. This is *your* magazine and it cannot exist without your contributions. I will even help you write your article. Please don't hesitate to contact me at rod.escayola@gowlingWLG.com or at 613.783.8684.

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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DOES MY NEW CONDO COME WITH A WARRANTY?

Common Elements Performance Audit and Tarion

The word 'performance' is defined as, "*the execution of an action*"¹ and the word 'audit' as "a careful check or review of something"². Extrapolating these definitions into the context of the construction of a residential condominium, then a performance audit can be loosely defined as a *careful post-construction review of a residential condominium*. Although the definition seems simple, some uncertainty may surround the performance audit process for condominium owners, board members and property managers. The purpose of this article is to provide an overview of the performance audit process; specifically, what is required, how the review is conducted, the claims process and how condominium owners can assist in the performance audit process.

What is Required?

The requirements for conducting a performance audit are prescribed in the Condominium Act, 1998 (The Act). As described in The Act, the board shall retain a professional engineer or an architect to conduct a performance audit of the common elements and any real property owned by the corporation, on behalf of the corporation³. The common elements are as described in the Condominium's Declaration. Furthermore, the performance audit must be completed between six and ten months following the date of registration of the corporation's declaration; with the subsequent report submitted before the one year anniversary of registration of the corporation's declaration. The purpose of conducting the performance audit as described in The Act, is for the assessor to provide a professional opinion as to whether any deficiencies exist in the common elements or real property, after construction has been completed which may give rise to a claim under the Ontario New Home Warranties Plan Act³.

The Ontario New Home Warranties Plan Act is administered by Tarion - a non-profit private corporation⁴. In administering

and enforcing the Ontario New Home Warranties Plan Act, Tarion protects the rights of new home buyers by requiring mandatory project enrolment for new home builds and managing the warranty process. Warranty coverage is divided into three distinct coverage periods; namely, the *one year* warranty, the *second year* warranty and the *seven year* warranty. The performance audit completed within the first year of registration is to make a warranty claim to Tarion in accordance with the new condominium common elements *one year* warranty. The *one year* warranty will be the focus of this article. Further information about the other warranty periods can be found on Tarion's website (www.tarion.com). The one year warranty requires: i) that the construction be free from defects in work and material; ii) be fit for habitation; and, iii) be constructed in accordance with the Ontario Building Code and the approved drawings and specifications⁴.

How the review is conducted?

The performance audit is a comprehensive review that examines all major systems and common element components of the newly constructed building(s) and landscaped areas of the property, which are the subject of the performance audit. The components reviewed include: the structural systems, mechanical systems, electrical systems, elevators, foundations, parking garage, fire protection systems, life safety systems, as well as building envelope components such as, windows, doors, roofing, waterproofing, air and vapour barriers, wall construction, cladding and exterior site features³.

Once the corporation has retained an engineer or an architect (the consultant), as described in The Act, the performance audit review process begins with the consultant requesting the record set ("as-built") drawings and specifications. It is important that "as-built" drawings be provided for review



and not “issued for construction” drawings, as the “as-built” drawings should contain all of the changes that were made during construction and therefore provide the most accurate representation of the as-built conditions. In addition, the consultant will be provided with the “Design and Field Review Reports” (Tarion Builder Bulletin 19), which is required to be completed during the construction phase for all condominiums enrolled under the Ontario New Home Warranties Plan Act⁵. The consultant reviews these documents and notes any areas that may warrant further investigation during the site visit. Any outstanding deficiencies, identified in the Builder Bulletin 19 are also noted.

Once the consultant has gained an understanding of the building(s) general design and construction, a survey is prepared to be distributed to the suite owners of the condominium corporation, as required by The Act. The goal of the survey is to determine if the suite owners have observed any evidence of damage or defects in the common elements that may give rise to a claim under Tarion’s *one year* warranty. The owners survey, prepared by the consultant should be detailed enough to be able to identify any potential warrantable issues in the building’s major systems, without being overly complicated to suite owners that may not have an understanding of building design and construction. Although generally the interior elements within the boundaries of the suites (not common elements) are not the subject of the performance audit, it is important for suite owners to note any deficiencies or defects in the common elements that may have caused or may cause damage to the interior of the suite, which may then become warrantable due to the origin being a defect or deficiency in a common element. Following the receipt of the completed owner’s surveys, the consultant will then review the responses and summarize

them into a table, grouping similar items, in order to discern any pattern in the owner reported deficiencies which may identify a common concern raised by several suite owners. These areas of common concern are noted by the consultant who will then endeavor to conduct a more thorough review of the identified item(s) during the site visit phase, if they are visually accessible.

The site visit is a general, non-destructive, walk-through evaluation of exposed common elements of the condominium and all its parts subject to the common elements warranty. Depending on the complexity of the condominium and the different systems involved, separate specialty sub-consultants may be retained by the leading consultant, to review specific building components (eg. mechanical system review by a mechanical engineer). In addition to a walk-through of the common areas, a review of a few select suites which are a representative sample of all the suites within the condominium is also conducted. During the site visit, any conditions warrantable as part of Tarion’s one year warranty, are noted and photographs are taken, which will be included in the final performance audit report.

The results of the consultant’s performance audit review are compiled into a detailed report which includes a general description of the property and the building’s systems. The defects or deficiencies observed are reported on Tarion’s Performance Audit Tracking Summary (*Figure 1*). The spreadsheet as shown in *Figure 1*, lists the warrantable items and their priority on a scale of 1 to 5. Once submitted by the consultant, the spreadsheet is a tool used to track the progress of the warranty items identified during the performance audit⁶.

The Role of Condominium Owners in the Performance Audit

The communication of relevant information about how the condominium's common elements are performing within the first year is vital to the performance audit process. The consultants retained by the condominium board use their knowledge and experience to form a professional opinion on the performance of the construction of the building(s) and in particular the common elements; however, this professional opinion is based on a review conducted over a relatively short period of time. Conversely, the suite owners may have lived in the condominium for up to one year. This extended time frame provides critical data as to how the building(s) and all of its inherent components function (or not function properly) through varying climatic conditions. It is often naturally occurring weather conditions that reveal otherwise hidden deficiencies or defects in the building envelope or the building systems. This underlies the responsibility of every suite owner to diligently and accurately complete the owner's survey that is distributed as part of the performance audit process. In order for the consultant to be able to identify areas of potential concern which require further review, the owners must be as descriptive as possible.

Prior to completing the owners survey, condominium owners should refer to Tarion's website (www.tarion.com) which has a lot of very useful information on the performance audit process, common element construction guidelines and what is covered under the common elements warranty, as well as the procedures and responsibilities for submitting warranty claims for non-common elements. Condominium boards and property managers, who are typically experienced in the performance audit process should assist individual owners by holding information sessions where they can educate owners on what their role and responsibility is in the performance audit process and what is required when completing the owner's survey.

What Happens Next?

Following the submission of the Performance Audit to Tarion, the builder then has a period of up to eighteen months following the first anniversary of the registration date to repair or resolve the items identified on the Performance Audit Tracking Summary, known as the "Initial Builder Repair Period"⁶. If all of the items listed are not adequately addressed within the eighteen months, then the condominium corporation may request a conciliation from Tarion. This request for conciliation can be made at any time within sixty days following the end of the initial builder repair period⁶. Once a request for conciliation has been made, the builder then has an additional

ninety days to address all of the outstanding items, known as the "Pre-Conciliation Repair Period"⁶. Failure of the builder to resolve or repair the outstanding items, Tarion will initiate the "Conciliation Process" and conduct a conciliation review. The result of the Tarion conciliation review is a Warranty Assessment Report which states Tarion's position on the outstanding items. Should Tarion deem any items to be warranted then the "Post-Conciliation Repair Period" begins and the builder has up to ninety days following the issuance of the Warranty Assessment Report to address the warrantable items⁶. Following the expiration of the builder's final repair period, should any outstanding warrantable items exist, then Tarion will affect the repairs directly with the corporation. The associated costs may be taken from the builder's guarantee fund or invoiced directly to the builder.⁶

Conclusion

The performance audit process is a legislated requirement, designed to protect new home buyers in Ontario. As a consultant conducting the performance audit, the process begins once they are retained; but as a new condo owner the performance audit begins when they take possession of their new condominium suite. Through the performance audit process, the owners and the builder work together to identify, repair and resolve any deficiencies or defects in the common elements of a new condominium that arise within the first year, within the guidelines set forth by Tarion. ■

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Item #	PA Ref. #	Deficiency Description	Deficiency Location	Priority	Vendor's Position	Vendor's Response	Condo Corp Position	Condo Corp Response

Figure 1: The columns of the Performance Audit Tracking Summary as prepared by Tarion.



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KEY ISSUES FOR A CONDOMINIUM'S FIRST YEAR



By James Davidson



A condominium's first year (after registration of the Declaration) is often the most important year in the life of the condominium. Many issues require attention in the first year. Here's a checklist of some of the key "first year issues":

I. First year performance audit – First year claims to Tarion

In accordance with Section 44 of the *Condominium Act* (the "Act") a performance audit must be prepared – and delivered as a claim to Tarion – in the first year. This of course triggers all of resulting steps and procedures (including conciliation, if necessary) under the Tarion process.

[Note: I also suggest that condominium corporations arrange for a second year performance audit or "performance audit update" – which should also be sent as a claim to Tarion before the corporation's second anniversary – in order to preserve any "two year Tarion warranties".]

It's also important to consider starting ordinary court claims (against the Declarant and/or others involved in the original construction) because *Tarion may not cover all of the corporation's claims or damages*. Ordinary Court claims are normally subject to a two-year limitation period (running from the date the corporation discovers or ought reasonably to discover the basis for the claim).

II. Turnover – Section 43 of the Act

Turnover from the Declarant normally occurs during the first year (although not always). Anyway, it's important to consider: Has the Declarant met its turnover obligations un-

der Section 43? If not, this may also be an offence under Section 135 of the Act. Another important consideration is: It's important to move with haste, to avoid expiry of applicable limitation periods (for an enforcement application against the Declarant or for the laying of charges under Section 135).

III. First Reserve Fund Study

For condominiums declared after May 5, 2001, the corporation's first reserve fund study must be conducted in the first year. And of course the corporation must then prepare its reserve fund plan and statement of future funding (Form 15) within the time frames set out in Section 94 of the Act.

IV. First year budget over-run

This is a "first-year issue", but of course is typically addressed in the second year. In particular, it's important to work with the auditor to determine the amount by which the corporation's actual first-year expenses have exceeded the Declarant's budgeted first-year expenses – and then to seek recovery from the Declarant in accordance with Sections 75 and 132 of the Act (if necessary).

V. The Declarant's Fiduciary Duties

Has the Declarant provided a project with all of the features promised in the Disclosure Statement and in Agreements of Purchase and Sale? (Examples could be parking, visitor's parking, recreational facilities, superintendent suites, etc.) If not, there may be basis for claim against the Declarant. [Again, such claims are normally subject to a two-year limitation period.] It may also be important to consider an ap-

plication claiming ownership of property (and perhaps a certificate of pending litigation against that property) if the property should have been transferred to the corporation by the Declarant – but wasn't!

VI. False or Misleading information from the Declarant

It's also important to consider whether or not the Declarant's Disclosure Statement and related materials (including the Declarant's budget) contained *any false or misleading information*? I normally recommend giving particular attention to the Declarant's budget. Was the Declarant's budget false or misleading – including the Declarant's estimated reserve fund contribution? Did the reserve fund contribution drastically increase following the first reserve fund study? If so, the corporation *might* have rights to assert a claim under Section 133 of the *Act* – quite separate and apart from the corporation's rights under Section 75 in relation to any first-year budget over-run.

VII. Agreements under Section 111 to 113 of the Act

Under Sections 111 to 113 of the *Act*, a condominium corporation has rights to terminate or challenge certain types of agreements entered into by the corporation prior to turnover (ie. while the corporation was under the Declarant's control). So, such agreements (and the related rights under Sections 111 to 113) require careful consideration. It's also important to be mindful of time limits noted in Sections 111 to 113. In some cases, these rights may extend beyond the first year; but it's important to consider these issues *without undue delay following turnover*.

VIII. Common Expense Arrears

Be sure to watch for any unpaid common expenses, and take steps to lien the units of defaulting owners within three months of any default (in accordance with Section 85 of the *Act*). Note that common expenses are also generally payable (by the Declarant) in relation to any unsold units.

IX. Directors' Conflicts of Interest

In some cases, representatives of the Declarant may stay on the Board. If so, they may find themselves in a conflict of interest (in relation to any Board deliberations respecting disputes or possible disputes with the Declarant). In such circumstances, the "Directors who are in a conflict" should not participate in any Board discussions or decisions respecting those matters.

X. The Status Certificates

Always give careful consideration to the wording of your status certificates – particularly any need to disclose *possibilities* for an increase in common expenses (including any possible special assessment) in Paragraph 12 of the status certificates. For example, if you learn that the Declarant's budgeted reserve fund contribution *may* need to increase (according to preliminary comments or a draft study from the reserve fund analyst), this would need to be mentioned in Paragraph 12 of your status certificates *even if you haven't yet received the actual study*.

XI. Standard Unit By-law

Has the Declarant turned over a standard unit description (as required by Section 43 (5) (h) of the *Act*)? Or does the description from the Declarant require amendment? In either case, you may need to consider preparing and passing a standard unit by-law.

XII. Other Matters

In addition to all of the above special considerations in the first year, here's a list of additional "regular" issues that all new Board members may wish to consider:

- 1 Prepare an Investment Plan (in accordance with Section 115 (8) of the *Act*) and also ensure that the corporation's investments comply with Section 115 of the *Act*. [Only "eligible securities", as defined in Section 115, are permitted.]
- 2 Consider required procedures to approve modifications to common elements by owners (in accordance with section 98 of the *Act*). Perhaps consider a "Section 98 By-law".
- 3 Consider revisions to the corporation's comprehensive By-law (usually By-law No. 1, as amended by subsequent by-laws) in order that the by-law is consistent with *Act*, does not contain "bad" provisions, but contains "helpful" provisions.
- 4 Consider amending the Declaration so that it includes a strong indemnification provision (stating that owners must bear responsibility for any liabilities, losses or costs incurred by the condominium corporation as a result of an act or omission of the owner or an occupant or guest of the unit; and also stating that resulting amounts owed by the owner are added to the owner's common expenses).
- 5 Consider amending the Declaration so that it includes a provision extending the circumstances under which owners may be held responsible for a deductible on the corporation's insurance policy (in accordance with Section 105 of the *Act*, as amended).



- 6 Consider a by-law establishing mediation procedures (for those disputes with owners that are subject to mandatory mediation and arbitration) (in accordance with sections 56(1)(o), 125, and 132 of the *Act*).
- 7 Consider a Directors and Officers Liability Insurance By-law (to ensure past directors and officers are always covered by the corporation's D & O insurance).
- 8 Consider any desired revisions to Rules - taking into account all amendments to the *Act*.
- 9 Ensure that the corporation's Record of owners and mortgagees is maintained in accordance with section 47 of the *Act*.
- 10 Ensure that the corporation's Records are otherwise being kept in accordance with Sections 55 of the *Act* (and the related regulations). [Consider keeping privileged and confidential records separate from the corporation's general records.]
- 11 Consider policies respecting:
 - Privacy
 - Human Rights
 - Violence and Harassment (per the *Occupational Health and Safety Act*)
 - Customer Service (per the *Accessibility for Ontarians with Disabilities Act*)
- 12 Obtain required information from non-resident owners (landlords) (in accordance with section 83 of the *Act*).
- 13 Arrange for timely collection of common expense arrears, in accordance with Section 85 of the *Act*. ■

James (Jim) Davidson is a partner at Nelligan O'Brien Payne, and has been a member of the firm's Condominium Law Practice Group for over 30 years. He represents condominium corporations, their directors, owners, and insurers throughout Eastern Ontario. His practice also includes building deficiencies. Jim is much sought after in the condominium community, and has been invited by many prominent organizations to speak about condominium law. In 2013, Jim was proud to receive the 'Ron Danks National Volunteer Leadership Award', which was awarded by the Canadian Condominium Institute (CCI) National Chapter, for his long-time work on CCI's quarterly publication 'Condo Cases Across Canada'. More recently, Jim was appointed to the Awards Selection Committee of ACMO (Association of Condominium Managers of Ontario) for 2016.

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CondoSTRENGTH !

An Important Resource for New Directors !



By Constance Hudak BA (Hons), MBA
Vice President CCI-Ottawa

You decided to protect your investment (maybe your first home) and you got yourself elected to the Condominium's Board of Directors. You know it's not a social club but rather a body which is responsible for the management and operation of a multi million dollar enterprise. Where do you go for help and advice ? Well if you are reading this article you are most likely already aware of CCI EO and of the extensive training opportunities offered throughout the year. Specifically the two day Directors' courses and the monthly seminars on a variety of topics.

But let's face it – in a new condominium with new Board members everything is new and is a first time experience. You will have received some basic foundation and understanding of your responsibilities but where can you go to discuss an idea or a problem which neither you, your Board nor Property Manager can address ? Your gut tells you that whatever issue you have it is only new to you and that some condominium somewhere has come across it too. They either succeeded or failed, but either way, wouldn't it be great to know how and what happened ? Why make your own mistake – learn from someone else's !

CondoSTRENGTH is the answer. It is a new support mechanism which was initially launched by CCI Toronto, and which will now be rolled out by all of the Ontario Chapters and by other chapters across Canada and modified to their respective provincial condominium legislation.

CondoSTRENGTH is a program designed FOR DIRECTORS, BY DIRECTORS as an additional benefit of membership in the Canadian Condominium Institute, and complements existing educational offerings. Rather than learn only from the experts that CCI EO brings to its traditional training and seminars, CondoSTRENGTH is designed to empower condominium Directors by facilitating the sharing of insights and experiences as a form of peer to peer learning. All aspects of this program will be available at NO EXTRA CHARGE to those who are already CCI EO members.

CCI EO recognizes that Boards and Directors often feel isolated or alone in addressing an issue and so this new initiative is designed to all condominium Directors to share both their successes and failures and to empathize with one another. Essentially CCI EO would organize a networking event in the Party Room of the condominium where the Host Director (the person with the story) resides. The event and the topic

would be publicized via our web site, registration would be restricted to approximately 30 – 40 persons, and the location only disclosed once registration was full and only to the registrants. No sponsors, no experts would be there. The Host Director and/facilitator (another Board member) would share the story / experience with networking to follow.

CCI EO would ensure "quality control" by first having established a group of volunteer Host Directors with stories/ experiences and CCI EO will have vetted the latter to ensure conformity with the condominium act and other related requirements. CCI EO would then promote the event and also provide promotional material to the Hosts, and also take care of all of the registration etc. A feed back forum would also be provided. We already have access to a library of information utilized by our Toronto colleagues and all of this is relevant to us here in Ottawa – same Act, likely the same scenarios and people !

SO STAY TUNED – for more information about CondoSTRENGTH - we will be organizing in the next two months and will begin offering these exciting networking sessions in early 2017 ! ■

Constance Hudak, Vice President of CCI Ottawa Chapter became active and interested in condominium issues upon the purchase of her first condo town home property ten years ago in Ottawa. She was elected as the complex's first President and remains in that capacity to this date. She also recently joined the Board of a high rise complex within the city. Within CCI-Ottawa she has served as President, and currently while Vice President she is also the Chapter's representative to the National Governing Body of CCI Canada. She is also Chairs the Chapter's Education Committee which is responsible for the development of all chapter training curriculum and material. Material for the Directors' Course has been revised to include new material as requested by past participants and a set of practical and topic specific seminars is established for each year. Constance has a lengthy and strong background in private sector transportation and communications business sectors as well as government experience in her earlier years. She has held many senior executive positions and has provided direction and leadership to multi-million dollar projects involving business re-engineering, systems implementation and change management.

Constance's view is that "A condominium may be the place where you live and your private island, but put all the islands together, and then you have a major port city and business to manage."



Condo**STRENGTH**

IMPROVING CONDOMINIUM SECURITY



By Scott Hill

The Importance of Condo Security

Condominium security has undergone many changes over recent years. Previously, security within a condominium building was a simple matter of ensuring that all the doors were locked and that the daily VHS tapes were changed in the CCTV (Close Circuit Television) system. The topic has become far more complex with the advancement of technology in security equipment. It is important to keep up with these changes in technology as it is not the only thing who is becoming more sophisticated: so are the criminals targeting our buildings. We are currently seeing an unprecedented rise in petty theft and damage incidents within condominium communities.

Research into the topic has shown that the usual targets for these criminals are the common element – hallways, stairwells, parking garages, vehicles, etc. Most reported security breaches are crimes of opportunity. They involve little to no planning on the part of the perpetrator. These crimes take the form of minor theft, break and enter into vehicles, vandalism, and similar petty crimes. The key to increasing the security of your complex is to ensure that these perpetrators are deterred, detected or delayed when trying to access the facility.

“The key to increasing the security of your complex is to ensure that these perpetrators are deterred, detected or delayed when trying to access the facility.”

Condominiums Security Systems are traditionally a hybrid of systems that have evolved over the years of existence of the condominiums. The initial security system is usually



installed by the developer and it is usually fairly minimalistic (both in scope and in refinement). In some cases, the system becomes rapidly obsolete making repairs or replacement very expensive. Additionally, the security system initially incorporated into the building make-up is rarely fulsome enough to protect the entire property. Cameras and other security measures are usually added on in a reactive and occasionally haphazard manner. Very rarely is there a plan in place to address both the upgrading of the technology and/or the replacement of worn out parts.

The goal of a security system is to ensure that all integral parts of that system work in harmony with the other parts – hence the Integrated Condominium Solution. Frequently, systems in place do not work in conjunction with other systems. By way of example, proper lighting within a condominium may act as a deterrent to prevent unwanted intrusions. A security camera acts as both a deterrent and a detecting mechanism. If the lighting is not sufficient for the camera to accurately record the events, then it's of limited use for the condominium.

This is where a Security Audit becomes an integral part of the condominium security plan.

Security Audit and Risk Levels

A security Audit will review the following systems within a condominium corporation and ensure that they are working in synchronization with one another. A security audit will review, and make recommendations, on the following systems:

- Access Control
- Intrusion Detection


- Security Lighting
- Video Surveillance System
- Physical Protection Systems
- Perimeter Protection
- Incident Response
- Security Redundancies and Contingencies
- Security Personnel – Guard Force, Policy, Procedures, Security Control Room, and Post Orders

The professional security audit differentiates from the one that is offered by the local Police departments in many ways. While an audit

by the local police forces is a useful first step, the professional audit will address vulnerabilities and threats differently and far more comprehensively.

Another major difference with the professional security audit is that it goes far beyond a simple auditing (reporting on the findings) and goes into risk management. When a vulnerability is discovered within the condominium corporation, in addition to being reported, the vulnerability is also assigned a rating (see chart below) of risk. This is a crucial part of the value-add to the audit process in that it allows a Board of Directors to prioritize their actions and allocate the security dollars towards the most important security areas.

Complete Audit vs. Free Audit		
	Complete Audit	Free Audit (Police)
# of visits to site	With the complete audit, the site is visited during day, night, weekdays and weekends (min. 5 visits)	Usually the site visit is conducting once – during a weekday, business hours - (when most people are out of building)
Risk Rating	The complete audit rates the vulnerabilities by risk in order to allow management to prioritize the recommendations	Usually no risk rating
Recommendations	Finding and Recommendations are precise "only 6 fc of lighting present – area should be increased to 10fc"	Recommendations can be vague " need more lighting in the front area"
Training	Eight security modules must be passed with a mark of 80% or higher - Continuing education points required to keep certification	2 weeks of CPTED training – Usually they act in the position for a 4 year term and are then move to another job.
Depth of Audit	Complete review of security integration and systems – including archiving, back-ups, database management, etc	Usually only review the exterior area and provide comments on lighting and environment
Knowledge of Condominium Processes	Recommendations should be presented in accordance with proper Condominium Governance.	Usually not aware of the restriction on Condominiums such as reserve fund expenses vs. operating expenses, substation changes to common element, etc.


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Risk Rating of Findings

Consequence of Risk

A: Fatal
 B: Very Serious
 C: Moderately Serious
 D: Serious
 E: Relatively unimportant

	6	5	4	3	2	1
A	Extreme Risk	High Risk	High Risk	High Risk	High Risk	High Risk
B	High Risk	High Risk	High Risk	High Risk	High Risk	High Risk
C	High Risk	High Risk	High Risk	High Risk	High Risk	High Risk
D	High Risk	High Risk	High Risk	High Risk	High Risk	High Risk
E	High Risk	High Risk	High Risk	High Risk	High Risk	High Risk

Probability of Risk

Almost Impossible Highly unlikely Unlikely but possible Possible but unusual Quite possible and likely Almost Certain to occur

Unmitigated Risk

Extreme Risk

Emergency

High Risk

Urgent

Moderate Risk

Mitigation must be justified

Low Risk

Mitigation should not be done

Mitigated Risk

Unacceptable Risk – take additional mitigating action

Unacceptable Risk – take additional mitigating action

Execute mitigation

Mitigation may not be justified

The professional security audit also provides accurate and comprehensive recommendations to mitigate the risk to an acceptable level. These recommendations are used by the Board of Directors when comes time to prepare the operating budget, as well as updates to the Reserve Fund.

Residents of Condominiums further expect that their security dollars (condominium fees) are spent wisely with the best return on the investment.

Mitigating Risk and Losses

Condominium Board of Directors will be relieved to know that it is not all “Doom and Gloom”. The majority of findings in the security report are within the yellow (or moderate risk) category. When looking at the risk associated within the security system, the Board of Directors are confronted with three options:

- **Mitigating the risk** (ie Implementing the recommendations of the Security Audit)
- **Off-loading the risk** (ie, ensuring you have proper insurance to compensate the corporation when damage occurs)
- **Accept the risk** (ie doing nothing about it)

When an item is stolen or a common element damaged, the loss can be measured in two ways: tangible and intangible loss. The **tangible loss** is easy to measure: how much was the stolen item worth in dollar terms. If we use a stolen laptop as an example, the tangible loss would be the replacement value: how much would it cost to buy another computer. Therefore the tangible number or value is relatively easy to determine.

The **intangible loss**, however, is more problematic to determine and has farther reaching consequences. Using the same example, it could be the loss of the information that was on the computer (and presumably not backed up somewhere else). Items stolen can have sentimental value to the owners, making it difficult to adequately price out the loss. Finally, and perhaps most importantly, there is the loss of confidence that goes beyond the value of the stolen articles. As a result of a break and enter, the residents and board members may feel that their home is not safe and subject to a crime wave. Or, the condominium complex may get a reputation within the industry and with real estate agents that the building is not safe. When this happens, the residents look to both the Board of Directors and the Condominium Manager to take adequate steps to ensure that both they, and their investments, are properly protected.

Quickly, a relatively minor theft can have far-reaching consequences to the Board of Directors, the Condominium Manager, and the stakeholders within the corporation.

Challenges and Budgeting

Board of Directors typically face challenges both before commissioning a security audit, as well as after receiving one. The first hurdle that they usually face is finding the budget dollars to contract the audit.

As we are all aware, all the operating and reserve funds come from the same source, the common element fees paid by the owners. In this

manner, the security budget must compete with other (and sometimes more visible) projects for the necessary funds. Further compounding this problem is that when an Integrated Condominium Security Solution is in place, it is transparent or invisible to the owners – this may cause some owners to not fully appreciate the protection that the Board of Directors has put in place. As William Webster, former Director of the FBI so succinctly phrased it:

“ Security is always seen as too much until the day it is not enough ”

Once the report is received, Board Members can sometimes be overwhelmed by the report. A list of two pages of recommendations can be daunting. This is where it is important to utilize the Risk Rating Scale and understand that not everything needs to be implemented at once. The recommendations should be prioritized and can be implemented over time, or in some cases incorporated into updates to the Reserve Fund Study.

When it comes to budgeting for the Security Audit, Condominium Corporations have the option to fund from the Operating Budget, or under certain circumstances, from the Reserve Fund Account. In the case of *Little vs. Metropolitan Toronto Condominium Corporation No. 590*, the judge made two rulings that may relate to the security audit. First and foremost, the judge ruled that an expansion of the security system, including additional cameras and updating to a digital system, in circumstances where the existing system had been shown to be insufficient, constituted a legitimate reserve fund expense.

A second ruling that came from the case was that consultation fees (in this case – the cost of the Security Audit), when incorporated into a Reserve Fund project, is a legitimate reserve expense. In this manner, if a condominium is planning on taking on the upgrading of the Security System (common element), then the cost of the Security Audit can legitimately be charged to the Reserve Fund.

Conclusion

Security Awareness is rapidly becoming a relevant (sometime pressing) consideration in everyday life. With city intensification along with the ever-changing political and social environment, it has never been more necessary or challenging to ensure that your person and property are adequately protected. Condominium Board Members and Owners must ensure that their valuable security dollars are spent in the most effective manner that allows for the best return on their investment. A security audit provides a long-term plan to ensure that the facility, the owners, and their belongings are appropriately sheltered from harm. ■

Scott Hill of 3D Security Services, is a Registered Condominium Manager (RCM) with ACMO, a Physical Security Professional (PSP) with ASIS, a Certified Security Project Manager (CSPM) with the Security Industry Association and a proud member of CCI.

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Rod Escayola, Editor

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THE FIRST YEAR IN THE LIFE OF YOUR CONDOMINIUM FROM THE PERSPECTIVE OF YOUR CONDO MANAGER



By John Andrews



The first year in the life of a condominium brings its fair share of challenges and rewards for everyone involved. Owners have been dreaming of the day they'd finally get to move into their brand new unit for months (sometimes years). Some have bought on paper and many are first time condo owners. As they move in, few fully understand what's ahead and even fewer have knowledge of the workings of a condominium corporation.

Eventually, the owners are called to attend the turn-over meeting. There, they face (often for the first time) the formality of an owners meeting. They meet representatives for the builder, a lawyer, a property manager, etc. Then a group of well-intentioned brave owners accept to run for the board – often not truly understanding the implications of this decision.

It all goes so quickly.... And then, suddenly, the corporation has come to life and the board of directors is now on its own.

This Board will have to deal with the performance audit, the reserve fund study, the Tarrion process, the first year budget (and often deficit), complaints from owners, recommendations from the manager, meetings with experts.... Wow! Before you know it, these new directors may wonder what they got themselves into.

This is where an experienced (and patient) property manager can become your best ally.

In this article, I will share with you some of the first year challenges and rewards from the property manager's perspective. Clearly, we can't cover everything in a single article but hopefully this article will give you some insight on what we (property managers) can do to help you get the corporation off on the right foot.

Relationship with the board

The first order of business is to establish a good relationship of trust and respect with the board. This is difficult because the directors (and owners) often come with great expectations. We often have to be the bearer of bad news. Bad news will be far easier to convey if the new board trusts the manager.

There are many tools to build trust. **Education** is perhaps the most important one. Educating the board and allowing them to get knowledge on what's ahead will do two things. First, it will minimize the time spent educating the board on every aspect of the condominium workings. This will allow both the manager and the board to focus on more important tasks. Education will also allow the board to confirm and verify the information they receive from the manager. Once the board sees that the manager is giving them the "straight goods" and that he or she "knows their stuff", they will be more likely to trust the manager's advice in the future.

Another way of building a good rapport is to **be generous with your time**. Especially at the beginning. Still, the board and the manager have to be realistic in their expectations.

Managers are responsible for more than one building. And in each building, there are many units. Each and every one of them is important and worthy of the manager's time and attention. You manager also has a family and a life to tend to. Still, it will go a long way if the manager is patient and generous with his or her time. The flip side, of course, is that directors of a new condo must be prepared to also put in time and work. We are working at this together.

A third tool to build a good relationship is to **deliver results**. Results are everything for the Board. Boards often face a lot of pressure from the other owners. Delivering results brings the pressure down and makes everyone look good.

While you have to progress on many fronts, "*visual results*" are far more valuable to owners. Owners have no idea what's happening behind the scenes. They don't care about the loose piece of flashing on the left rooftop edge of building number 1. What they care about is whether the hallways are painted, the carpets are clean and the patio stones are levelled. So, while you are pushing the developer to do all of that "behind the scene" stuff, you need to prioritize the items which will reduce the irritants. The board and the owners have to see the results.

Keeping promises and providing a logical explanations when things don't go as well or as quick as expected will also go a long way. The board and the owners have to understand that, as much as the manager wants to move on every deficiencies, this process does take time. Managers can't make the builder or its contractors actually do the work. We make requests, escalate, follow up and push.... but at the end of the day, we don't have a stick or a magic wand. The process will unfold as it should... but it may take time. It's important to explain this to everyone in order to set their expectation from the beginning.

Finally, **communication** is possibly the most powerful tool to build trust and respect. It's important for the directors to see and hear all of the work you do. This is not a self-gratifying tool to get praises. It's actually the best tool for owners to know that the manager has their back and that he or she is working hard. It will also provide directors with the information they require to be able to answer questions from the owners they meet in the hallways or in the parking.

The first board meeting

It's important for the manager and the board to get to know each other and to set a plan of action at the first board meeting.

I like to get a sense of *what experience* we have around the table and get an idea of why someone is on the board. Sometimes, people are on the board with a precise agenda (as valid as it may be). If you are here strictly to change the rules to allow BBQs on the balconies, you are here for the wrong reasons.

We then work on a *plan of action*. There is a lot to tackle during the first year: the performance audit, the reserve fund study, the budget, the Tarion process... Most of this means nothing to many first-time directors. If they don't understand it and if they don't understand its importance, they may not prioritize it appropriately. There is a lot of background information that they need to get a real grasp on before

they can ever dream to move forward. As stated earlier, that's where **education** comes in handy!

There are two extremes when dealing with new boards. Those who come with an endless list of projects and ideas and want them all done at once and those who, on the contrary, thought being on the first board was going to be a breeze. There is a lot to do and we have to prioritize the tasks at hand.

A good manager doesn't mind working hard, but the roles have to be well established from the beginning. There are things managers do best and there are things better left in the hands of directors. Managers have experience and are able to advise, recommend and guide. We often know your systems, have lots of contacts in the industry and have gone through this before. There are other things that can only be well done from within the community. Websites, newsletters, volunteer committees... even gardening committees. Building a community is best left to the owners. Building systems and protocols, can be better guided by a good manager.

Early on, we speak of our *respective role*. We basically go over what a manager does and what the directors can do. The board makes decisions. I'm happy to guide and answer questions, but the ultimate decision has to come from the board. We also discuss the true job of a director. Their role is to manage the affairs and assets of the Corporation. They are not there to fix everyone's personal problems. Directors actually have a statutory role to play on behalf of the Corporation. This usually requires that we go over what is a common element, what is a unit, what is an exclusive-use common element and who is responsible for each of these.

We also have to have a little "101 on insurance". Insurance coverage is not an endless pit of money that can be used to maintain the assets. At the end of the day, every insurance claim leaves a mark. Eventually, the corporation has to pay the piper, usually in the form of a premium increase. Often directors are not prepared for this.

I always strongly encourage my board members to attend training. Go get knowledge. We will work far better together if we are on the same page. I also strongly encourage them to read their governing documents. It never cease to amaze me how many people have never read those. Fairly early on, I like to make recommendations to my board on how to improve rules or bylaws. It's a lot easier to implement changes as the beginning than it is later on.

We also usually speak of the Code of conduct. I strongly encourage directors to sign CCI's Code of Ethics. It's important that they understand the role they have to play from the beginning.

Relationship with the builder

It is also important for the board to develop a good relationship with the "builder" right from the get go. While builders are obliged to deal with all warranty issues within the strict compliance of the Tarion process, a builder (like anyone else) may be more incline to go the extra mile and to assist in the crucial first year if there is a relationship of respect and cooperation between the players.



A good example in one of my buildings was when the board went to the builder requesting the installation of a carwash bay. This amenity was not on the drawings and it was not intended to be placed in the building. Still, in great part due to the good relationship between the builder and us (the board and I), the builder understood the requirement and the Board's position. The builder went ahead and installed this amenity, at a significant cost. They could have easily said "Nope. It's not on the drawings. Let's move on."

Without a good relationship, without a little bit of trust from either side, that type of thing would never happen. Going to a builder with a really negative standoffish attitude, may lead them to be less receptive and they may be more likely to conform to the strict barebones requirements.

First year deficiencies

Building a good relationship with a builder requires a very difficult balancing act. While the board wants to work on a good relationship with the builder, it can't be at the detriment of the Corporation's needs. Corporation's interests can be in conflict with the strict interest of builders. Playing nice cannot be done at the detriment of the corporation's need. It is, on the contrary, a tool to advance the corporation's best interests. The entire process is ultimately an exercise in negotiations.

Resolving all issues and deficiencies through the process of the performance audit is certainly a challenge. At the end of the day, the Board expects as many of its concerns and stated deficiencies to be resolved to the corporation's satisfaction. But not all issues are warrantable under Tarion. Not all issues are breaches to the Building code. That's when the negotiation "dance" starts.

We meet with the builder, some time on a monthly or semi-monthly basis. We go over various deficiencies. In many cases, a lot of our progress is done through verbal exchanges and discussions – but it is important to document everything and keep a close tab on the promises and deliveries!

Sometimes, we take the discussion away from what is "warrantable" and what is "in the plans" and try to advocate common sense. We try to get them to step in the shoe of the owners. Basically, we try to use the carrot before we have to use the stick. Unfortunately, an extremely combative board often receives far, far less than one who is respectful and more reasonable. It's human nature.

At the end of the day, the big ticket items may very well have to be dealt through the Tarion process. It's a difficult and ongoing battle.

You give and take, keeping in mind that it is key to document everything and to meet all of the required deadlines.

Getting the turn over documents

One of the most important task for me is to get all of the proper turn over documentation. Without them, the Corporation may be handicapped for years to come. It is key to get your hands on them quickly, before the get lost.

The documents you require include the minute book, the declaration, the by-laws and a current set of rules but there are many more. You want to ensure you also get:

- copies of all agreements entered into, including management contracts, deeds, leases, employment contracts, licences and easements;
- copies of all insurance policies;
- bills of sale of all assets of the corporation;
- all records related to units or employees of the corporation;
- all warranties and guarantees for all of the equipment;
- as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- all existing plans for underground site services, site grading, drainage and landscaping;
- a schedule of what constitutes a standard unit;
- all financial records of the corporation;
- the most current disclosure statement;
- the name and address of service for all owners.

The list goes on...

While the builders have an obligation to turn these over, sometimes you have to chase after them. Keep at it and don't let it slip through the cracks. Getting these will have a major implications on how easily you will operate in the coming years. It will make everyone's job far easier

A lot of work but a lot of rewards

The first year in the life of a condo can seem like an insurmountable task. There are a lot of eyes on you. Naturally, you have to have huge shoulders and have to be prepared to receive a fair bit of criticism. At the end of the day, the manager is not responsible for the plumbing or for the design of the lobby or for the decision to put 2 elevators instead of three. We are not responsible for the condo fees.

Still, there is nothing like receiving and earning the trust of a board and of a group of owners. There is nothing like having owners recognize and acknowledge when you have gone beyond the call of duty for them. There is nothing like having help turn a building into a home; help *turn a corporation into a community*. ■

John Andrews has worked as a property manager with Apollo Property Management for 7 years. He manages many buildings of different shape and sizes and has a lot of experience with new condo complexes. Prior to this, John worked alongside one of Ottawa top developers in a construction role. In his free time, John enjoys staying fit playing hockey and caring for his 11 year old Son.

First-Year Deficit of a Condominium Corporation



By Rod Escayola
Re-print from *Condo Adviser*

One of the first challenges of a new condominium board of directors is the survival of the first fiscal year on a budget set by the builder. When there is a shortfall between this first-year budget and the actual operating expenses incurred by the corporation during that first year, condominium corporations can turn to the declarant.

First year deficit

The *Condominium Act* requires the declarant to prepare a disclosure statement for every purchaser. This disclosure statement includes a copy of the budget statement, which includes the budget for common expenses for the first year following the registration of the declaration. This budget lists the proposed amount expected for each expense line item. One of the purposes of this disclosure statement is to enable individuals contemplating the purchase of a condominium to have a full understanding of the cost of owning the condo they are about to purchase. Indeed, purchasers rely on this information to do their own personal budget.

So, what happens if the first-year budget is off and the corporation is faced with a first-year deficit?

Section 75 of the *Condominium Act* provides that a declarant is responsible and must reimburse the corporation any deficit sustained in the first year following the registration of the declaration. The purpose of this section is to provide some predictability and certainty to those purchasing a condominium, enabling them to make an informed financial decision.

How does the corporation make that claim?

A condominium corporation wishing to claim the first-year deficit must act quickly. As soon as it receives the audited financial statement covering the first year, the board shall compare the actual amount of common expenses and revenue with those provided in the declarant's budget statement. If there is a deficit, the corporation must give written notice of it to the declarant **within 30 days** of the receipt of the audited financial statement. Note that, under the "new Condo Act", the corporation will have a more comfortable 90 day period to claim the first-year deficit.

The declarant must pay the deficit within 30 days of receiving this notice.

In the event that the declarant disagrees with the corporation's claim for reimbursement, the first step is to proceed to mediation. The mediator is not there to make a ruling. He or she is there to help the parties reach a more expeditious and often less expensive resolution. If mediation fails to resolve the dispute, then the parties must proceed to arbitration. Arbitration is like a "private court", where the parties chose (and pay) someone to adjudicate the matter and render a binding decision.

Can the declarant question some of the condo's expenses?

The ability to claim the first-year deficit does not give the corporation a licence to spend money during the first year with the expectation that the declarant will pick up the tab. A declarant may be able to question the propriety and reasonableness of some of the expenses which lead to the shortfall. Keep in mind that the declarant is also permitted to set off against the deficit, any surplus in revenue for the use of any part of the common elements, assets or other facilities related to the property. Finally, keep in mind that the declarant will not be responsible for any deficit attributable to the termination of an agreement under section 111 (termination of management agreement entered into by the declarant) or section 112 (termination of other agreements such as those for the provision of goods or services and those for the leases of common elements).

Still, the starting point under the Act is that the declarant is responsible for any first-year shortfall, whether the expenditures are covered in the declarant's first-year budget or not. The analysis is done considering the total expenditure and not a line-by-line analysis. That is to say that the corporation should compare its bottom line with the budget's bottom line.

The policy behind section 75 allowing the Corporation to recover the first year deficit helps protect purchasers by preventing a developer from producing an unreasonably low budget statement and misleading purchasers to believe that monthly expenses will be lower than actual expenses. ■

Rod Escayola is a partner with the law firm Gowling WLG in Ottawa and heads Gowlings' Condominium Law Group. He is the editor of Gowlings' condo law blog the Condo Adviser.ca. He also sits on the board of directors of his own condominium corporation.

New Members



WELCOME TO THE FOLLOWING NEW CCI EASTERN ONTARIO CHAPTER MEMBERS

PROFESSIONAL MEMBERS

Ecaterina Bivol
Apollo Property Management

Peter Lindop
Bartley-Hathaway Business Solutions

Megan Molloy
Elia Associates PC

INDIVIDUAL MEMBER

David McElrea

BUSINESS PARTNERS

Andree Ball
Keller Engineering

CORPORATE MEMBERS

Carleton Condo Corp 0011
Carleton Condo Corp 0082
Carleton Condo Corp 0099
Carleton Condo Corp 0014
OCSCC 811
OCSCC 660
Carleton Condo Corp 829
RSCC 63

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Eastern Ontario Chapter

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*CONDOMEDIATORS.ca is so proud to announce that **Marc Bhalla** has earned the Chartered Mediator (C.Med) designation of the ADR Institute of Canada.*



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SCHEDULE OF EVENTS A YEAR AT A GLANCE

YEAR 2017

CCI Eastern Ontario would like to present our upcoming educational seminars/events for 2016-17. Please visit our website for details and registration information at www.cci-easternontario.ca

JANUARY

Lawyers, Guns and Money

January 25

FEBRUARY

Security, More than just locks on doors!

February 22

MARCH

No reservations about Reserve Funds

March 29

APRIL

Budgeting

April 26

MAY

Spring Directors course

May 6-7

Kingston Directors training

May 27

JUNE

ACMO/CCI-EO 5th Annual Conference

June 2

Have Something
to say?

Join CCI Eastern Ontario on **Twitter & LinkedIn** to participate in the conversation, remain informed and to gain access to our experts, providers and members.

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Message from the President

BY BILL THOMPSON, BA, RCM, ACCI, FCCI
CCI NATIONAL PRESIDENT

You know that feeling that you get when you arrive home after an extended vacation? You know the one that I am talking about. You feel excited to be home, yet sad that the vacation is over. You know that you have a million things to do, and that reality is just around the corner. You are excited to tell your friends and family about your adventures, yet disappointed that the adventure had to come to an end.

I can only imagine that this is very similar to the feelings that must be racing through Geoff Penney's and Peter Harris' minds. They have been on an adventure with CCI. They have challenged their comfort zones and pushed their limits while serving on the National Executive for CCI.

This AGM, their adventure on the National Executive is coming to an end. Both Gentlemen (and they truly are gentlemen), will be stepping off of the Executive at the end of an extremely long and dedicated tenure, leading CCI through its rebirth and transformation from the original model, to the new streamlined Executive. They have given their wisdom, their passion, their time and a large part of their lives for the benefit of the Canadian Condominium Institute, and for that we will always be in their debt.

Their extended adventure has taken them across the country to virtually every province and allowed them to meet and befriend so many people and have so many exciting adventures, that they must

certainly be conflicted in their emotions right now. These gentlemen played hard, worked hard, and should be commended for their dedication, commitment and pure passion for CCI. Although they are leaving the National Executive, they are still valuable members and resources to CCI and will be called on often in the future I am sure. Thank you guys for everything that you have done, and will continue to do, in the best interest of CCI. It has been a pleasure working with you. You are both consummate professionals.

Another notable change coming up is the retirement of Diane Gaunt. Diane has been a foundational influence at CCI, having served CCI, first through Taylor Enterprises and recently through Association Concepts as our Executive Director. During Diane's time with CCI she has seen the growth of CCI from a fledgling association with barely a few chapters and membership counting in the hundreds, to today. Today we have sixteen chapters across the country and have members in virtually every province. Diane has been with us since there were perhaps ten thousand condominium units across Canada, to the current estimated 2.6 million units! She has seen us struggle to get in front of government and has helped us to become the leading resource for all things condominium to the public and government alike.

Her knowledge of our past has constantly been available to us to remind us where we have been,

and that "the way has already been tried", when she saw us spinning our wheels in futile efforts. Her guidance and constant nudging have kept many Past Presidents on track, and kept our volunteer forces engaged and passionate for decades.

I want to thank Diane, on behalf of all of the members for the help and leadership that you have given to us over all of these years. Diane, we wish you happiness and exciting times in your retirement, but hope that you will drop in from time to time when you find yourself looking to reconnect with some of your friends.



I also want to remind everyone that we will be saying thank you to all of these CCI difference makers on Friday October 28th at the Awards dinner which will follow the Annual General Meeting in Collingwood. Please attend if you can, and thank these wonderful people in person.

continued...

Message from the President Cont'd.

As we all know, the only constant in life is change. Change is inevitable, but it is also invigorating! Those of us who can embrace change with a smile and take on the challenge of change with an open mind will always succeed. That, in itself, is exactly what our retiring leaders have done so admirably. They have managed the changes that were inevitable for CCI to survive and to thrive in this constantly changing world.

Lastly, I want to say "Thank You" to all of the members, as I end my term as President of the National Executive. It has been my pleasure, and my honour, to represent you for the last two years. There have been some tough decisions made and some easy ones, but I enjoyed the experience and hope that you did too. I can tell you though, that I am the bigger winner here, as I received way more back than I could have possibly given. The friendships, the experiences, the perspective, and the honour of acting as your President will be with me forever. That will never change.

As the current process goes, this will be my last message to the membership, as we welcome our new President Doug Forbes. Doug is a very capable, experienced, open minded individual who will no doubt entertain you with his messages over the next two years, as he fulfills his term. Welcome Doug and I hope that you enjoy the experience as much as I have.

It feels like I should say "Good Night Johnboy" right about now...



Bill Thompson

Condo Cases Across Canada

BY JAMES DAVIDSON, LL.B., ACCI, FCCI
NELLIGAN O'BRIEN PAYNE, OTTAWA



It is my pleasure to provide these brief summaries of recent condominium Court decisions across Canada. 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.

Note to readers: In B.C., condominium corporations are "strata corporations" and in Quebec, condominium corporations are "syndicates".

Note: This publication contains only a handful of this quarter's summaries. CCI members who would like to see the rest of this quarter's summaries can find them at the Condo Cases Across Canada website: www.condocases.ca The current password is "condocases".

James Davidson LLB, ACCI, FCCI, Nelligan O'Brien Payne, Ottawa

THE HOT TOPIC – The decision-making authority of condominium Boards

In a recent case, the Ontario Court of Appeal has confirmed that the "business judgment rule" applies to decisions by condominium Boards. This means that the Courts will show deference – and therefore won't overturn a Board's decision – as long as:

- the matter decided was within the Board's mandate or decision-making authority;*
- the Board arrived at its decision in good faith, with fair process; and*
- the decision was "within a range of reasonable choices".*

To me, this means that condominium corporations must make reasoned decisions, or in other words they must have sound reasons for their decisions. If they do (and as long as a given decision doesn't fall outside a spectrum of reasonable choices), then the Court will generally respect and uphold the decision – whether or not the Court might have come to a different decision.

Here's my summary of the case:

3716724 Canada Inc. v. Carleton Condominium Corporation No. 375 (Ontario Court of Appeal) August 30, 2016

Appeal allowed. Court of Appeal finds no oppression and defers to decision of board of directors

The lower court held that the condominium corporation acted oppressively in imposing a condition for approval of the owner's requested changes to the common elements. The lower Court ordered the corporation to approve the requested changes, and also held that there should be no vote of the owners pursuant to sections 97 and 98 of the Condominium Act, 1998. [See Condo Cases Across Canada, Part 54, May 2016.] The condominium corporation appealed, and was successful. The Court of Appeal found that there was no oppression; and applied the "business judgement rule" to the board's decision. The Court of Appeal said:

Therefore, to summarize, the first question for a court reviewing a condominium board's decision is whether the directors acted honestly and in good faith and exercised the care, diligence and skill that
continued...

a reasonably prudent person would exercise in comparable circumstances. If they did, then the board's balancing of the interests of a complainant under s. 135 of the Act against competing concerns should be accorded deference. The question in such circumstances is not whether a reviewing court would have reached the same decision as the board. Rather, it is whether the board reached a decision that was within a range of reasonable choices. If it did, then it cannot be said to have unfairly disregarded the interests of a complainant.

...

In this case, the Board's decision had the effect of rendering the respondent's proposal less profitable. But that does not mean that the Board unfairly disregarded the interests of the respondent. The Board was entitled, indeed required, to consider the impact of the changes on the interests of other unit owners. And as the deemed occupier of the common elements of the condominium, it was also entitled to consider the security implications for users of the common elements. It did not ignore or treat the interests of the respondent as being of no importance. It simply - in good faith and after a fair process - determined that legitimate and reasonable competing interests were more important. Its decision not to approve the requested changes to the common elements unless the respondent hired a security guard was within a range of reasonable choices.

BC Cases – Barrett v. The Owners, Strata Plan LMS 3265 (British Columbia Supreme Court) August 12, 2016

Court orders that schedule of unit entitlements be amended to include finished basements and finished lofts in calculation of habitable areas

The unit entitlements were originally calculated on the basis of habitable square footage in accordance with section 1 of the Condominium Act. Unfinished basements, lofts and certain other portions of the units were not included in the unit entitlement calculations. Over time, the basements and lofts in many of the strata lots were finished; but the schedule of unit entitlements was never amended to reflect any corresponding increase in the habitable areas of those strata lots.

The petitioners were the owners of six strata lots that didn't have basements or lofts. Because common expenses are based upon unit entitlements, the petitioners asserted that the schedule of unit entitlements should have been revised (to reduce their entitlements) because of the increased habitable areas of the strata lots with finished basements. The Court agreed. The Court ordered that the schedule of unit entitlements be amended pursuant to section 246 (8) (a) of the Strata Property Act. The Court also ordered, pursuant to section 164 of the Strata Property Act, that a previous resolution passed to approve a special levy for roof replacement was to be varied to reflect the amendments to the schedule of unit entitlements.

Frank v. The Owners Strata Plan LMS 355 (British Columbia Supreme Court) June 30, 2016

Installation of roof deck railings was a repair, not a change

The owner had the use of a roof deck, which the Court determined to be limited common property pursuant to the Strata Plan. The owner discovered that the exterior parapet walls framing the roof deck were lower than the height required under British Columbia's Building Code. With the concurrence of the strata council, the owner began a process of obtaining the necessary permits from the City of Vancouver to install railings of the proper height. However, a dispute ultimately arose between the strata corporation and the owner respecting approval of the new railings and responsibility for the costs to install the new railings.

The Court determined that installation of the railings was necessary work. Therefore this work was not a significant change requiring approval by three quarters vote under section 71 of the Strata Property Act. The Court in fact determined that the railing installation was a repair falling within the responsibilities of the strata corporation. In addition, the Court held that the strata corporation's actions (in failing to adequately co-operate with the owner during the entire process) were significantly unfair. The Court held that the owner "had a reasonable expectation that he had the right to use and enjoy his limited common property as a roof deck".

Alberta Cases – Condominium Corporation No. 072 9313 (Trails of Mill Creek) v. Schultz (Alberta Court of Queen's Bench) June 17, 2016

Court sets aside fines and costs levied by condominium corporation against owner who contravened "adults only" by-law

The condominium corporation had an "adults only" by-law. The owner purchased a unit and moved in with a minor son. The board demanded compliance with the by-law, asking that the minor leave the condominium by July 6, 2014. The owner was not able to meet that deadline. The owner made attempts to sell without initial success. The corporation ultimately started this application to evict the minor. Before the Court's decision was rendered, the unit was sold and the eviction issue then became moot. However, the Court still had to decide further issues, namely the rights of the condominium corporation to fines and costs. The board had imposed fines (for non-compliance with the by-law) beginning January 1, 2015.

The Court held that there was no proper purpose for the board's imposition of fines. The Court said:

continued...

The fines levied here appear to be pointless except, possibly, from the standpoint of deterrence. Otherwise the decision seems to be punitive and to serve no useful purpose. It might have been different if Ms. Schultz was unwilling to comply.

The Court therefore dismissed the condominium corporation's application for fines and for recovery of costs

Haymour v. Condominium Plan No. 802 2845 (Alberta Court of Queen's Bench) July 12, 2016

Claims of former owner dismissed

Pursuant to previous Court orders, the condominium corporation had sold the owner's unit in order to recover outstanding arrears of condominium fees. The former owner then filed a caveat against the unit, and was permitted to bring an action to attempt to prove the claimed interest under the caveat, but subject to strict directions from the Court about the process of the action. The defendants in the action ultimately brought this motion to summarily dismiss the claims of the former owner, and they were successful.

Waymarker Management (Silver Creek) Inc. v. Tibu (Alberta Court of Appeal) April 25, 2016

Appeal Court confirms restraining order against condominium owner

There had been a "history of unpleasant encounters" between one of the owners in the condominium and the employees of the condominium's manager. As a result, the Queen's Bench judge had issued a permanent restraining order against the owner, ordering that she have no contact with the manager's employees.

The owner appealed. On appeal, the restraining order was upheld, but with some softening of the restrictions in order to permit the owner to pursue her property rights. The Court of Appeal said:

Accordingly, we conclude that the restraining order must remain in full force and effect subject to the deletion of the arrest and detention provisions and that the order should also be varied to include a provision that, save in the case of an emergency, the appellant shall communicate with employees of Waymarker, including Mr. Cyr, only in writing. If for any reason employees of Waymarker are required to enter the appellant's condominium, she is to be absent and notified in writing once their tasks have been completed. To that extent only, the appeal is allowed.

Ontario Case – Wu v. Carleton Condominium Corporation No. 383 (Ontario Small Claims Court) April 20, 2016

Condominium corporation had not improperly withheld records

The owner sued the condominium corporation pursuant to section 55 of the Condominium Act, 1998, for alleged failure to produce requested records. The Court dismissed the owner's claim. The Court said that the condominium corporation had provided all of the requested records apart from email addresses. In relation to the email addresses, the Court said that they should not be provided to the owner. The Court said:

I conclude that electronic addresses are not part of an address of service within the meaning of section 55.

The Court also said that the corporation had properly redacted minutes (provided to the owner) as required by section 55 (4) of the Act.

Newfoundland and Labrador Case – Summer Services Limited v. Karwood Commercial Condominium Corporation (Newfoundland and Labrador Supreme Court) June 8, 2016

Board failed to act honestly and in good faith in refusing consent for air conditioning

The applicant was the owner of a unit in a commercial condominium. The condominium Declaration required the Board's written consent for any alterations or repairs to a unit or for any service upgrades to a unit for air, water or electricity.

The owner asked for the Board's consent to install air conditioning. The Board gave approval, but conditional on the owner bringing itself into compliance with provisions of the Declaration respecting the permitted uses of the unit. [The Board alleged that the owner was in violation of the Declaration in that the owner's use was in competition with the core business of another owner.] The Court held that the particular condition could be imposed provided this was done with honesty and in good faith. The Court said that the Board had not acted honestly and in good faith. In particular, the Court concluded that the Board's true reasons for refusing consent were not as expressed to the owner. Therefore, the Court ordered that the owner's application for air conditioning be approved. 🍁

CHAPTER CHATTER



North Alberta Chapter – As the excitement builds for Captain Connor and our new arena, CCI North Alberta flies a little under the radar building our membership base and continually looking at ways to improve our product for all facets of the condominium industry.

2015-16 was a very productive year for the Chapter with just a few of the highlights listed below.

- A 20% increase in membership this past year with a total of 536 paid members.
- Substantial increases in membership engagement with our website registrations, online message forum participation and our recently created MailChimp electronic newsletter.
- Attendance at Educational events increased by 40% not including our most successful Conference and Trade Show to date which had over 500 attendees, more than double from the previous year.
- Continued involvement with the government during the ongoing Regulation amendments and with RECA through the Condominium Manager Licensing Advisory Committee.

Over the summer we held two strategic planning sessions for 2016-17 with the assistance of facilitators Nadine Riopel and Gord Sheppard. It was great to have some outside expertise to help us make some tough decisions as well as keep us focussed on the goals at hand.

Mother Nature forced us to postpone our Annual Golf tournament once but we would not be denied a second time, enjoying a fine fall afternoon at the Derrick Golf and Winter Club. Kudos to Golf Chairman Curtis Siracky for all his efforts for a record turn out and as a result we were able to make a \$1000 donation to the Edmonton Food Bank along with a large amount of food items.

As we got back into the swing of things in September, we saw some administrative changes in the office. The Board of Directors approved a new structure in the office, creating an Executive Director position (Alan Whyte) and two part time roles of Office Administrator (Collen Peters) and Bookkeeper (Christine Schultz). Joyce Schwan our beloved Administrator these past three years, is currently on a medical leave and we wish her a speedy recovery. Our recently held AGM featured a hotly contested election for the Board of Directors with 14 candidates vying for 7 positions. We welcome back David Vincent and Shantel Kalakalo to the Board along with three members who have all had previous Chapter Board experience in Barb Surry, Dawn Mitchell and Hugh Willis. Newcomers Chris Vilcsak and Nigel Gamester bring a brand new perspective and round out the remainder of the elected slate for 2016-17. At this time we would like to thank former Board Members Jim Wallace, Susan Milner, Curtis Pruden and Jason Matthews for all of their efforts during the time they spent on the Board.

Like our hockey team, we look forward to continue to build on the momentum we have created for even more successes in this upcoming season. We will compare report cards in the (late) spring of 2017!

*Alan Whyte, Executive Director
CCI North Alberta Chapter*



Eastern Ontario Chapter – As the season's change, the Nation's Capital and the Eastern Ontario region shines with the changing of the leaves and very vibrant colors.

CCI Eastern Ontario has been a very busy chapter and we need to thank the hard working CCI-EO board of directors for their time, commitment and dedication to making this chapter so successful. The board has

been listening to its members and offering many different educational, networking and social opportunities. The big change was the elimination of fees to members for seminars. CCI-EO offers 6 seminars a year and the board felt it was important to get as many members out free of charge. We have had a successful line up of courses and the number of attendants keeps growing. Just last week we hosted a "Night with the experts". Seven industry professionals rotated on a speed dating theme and had the chance to talk and discuss the burning issues with 75 members who were engaging and eager to discuss and listen to the concerns they are facing.

Our Newsletter has been an example of incredible insights from professionals in the community and the industry. Our Newsletter editor has been very instrumental in addressing the issues with huge success. Our spring issue took on a change and became themed based. The spring issue was based on smoking and odours in Condos. The summer issue was based on Ageing and on Ageing Condominiums. Both issues were so well received that we are going to continue on the themed issue idea and the fall publication will be focused on the concerns of New Condominium and all that they face.

In November we are hosting our Weekend Director's Course. This event always sells out and provides comprehensive information and guidance to Condo directors and management groups. Attendants walk away with knowledge and a new understanding of the importance of staying educated and informed. We offer this weekend course twice a year, plus we have added on a full 1-day Director's Course in Kingston. Again, the goal is to reach out and help inform and educate our members.

Our winter line up of courses will meet the continued needs of our membership. January will kick off the New Year with the very popular "Lawyers, Guns and Money". In February, the new seminar "Security, Not just a Lock on the door" will be launched. This seminar tackles many topics, including security in the building, around the building, safety in the parking area, issues with Airbnb and much more.

continued...

Chapter Chatter Cont'd.

Our March seminar is titled "No Reservations about Reserve Funds" and April's seminar is targeted on "Accounting and Budgeting".

We are also very involved with and work closely with ACO – this past spring offering a very successful ACO/CCIO conference in May in Ottawa and we are preparing for another successful Conference in Kingston in November.

CCIO went Green this year and that has allowed us to double our reach, and hopefully reach more members and their boards in the future.

Social media is our newest avenue and we are working hard to stay ahead on Twitter and LinkedIn. Please follow us.

"Get involved, stay informed"

*Julie Klotz, Administrator
CCI Eastern Ontario Chapter*

MARK YOUR CALENDARS!!

We are already getting ready for our **Spring 2017 Leaders' Forum**, when we will be packing our bags and heading to the home of our newest chapter:

FREDERICTON, NEW BRUNSWICK!

Plan to join us at the **Delta Fredericton** from **June 7-10, 2017** to enjoy CCI education AND some Maritime Hospitality!



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UPCOMING EVENTS

Eastern Ontario Chapter:

October 19 – AGM and Seminar – Ottawa
November 19&20 – Fall Directors Course – Ottawa
November 25 – ACO/CCI Kingston Conference – Kingston

Golden Horseshoe Chapter:

October 22&29 – Level 200 course – Kitchener
November 26 – Level 300 Course – Stoney Creek

Huron Chapter:

October 29 – Insurance Seminar – Collingwood

London & Area Chapter:

Nov 5&12 – Condominium Course – London

Manitoba Chapter:

October 20 – Lunch n Learn: Preventative Maintenance: Pay A Little Now or A Lot Later! – Winnipeg
November 17 – Seminar: Insurance – Water is the New Fire – Winnipeg

New Brunswick Chapter:

October 25 – Directors' Forum – Fredericton
November 5 – AGM and Seminar – Fredericton

Newfoundland & Labrador Chapter:

November 22 – Seminar: Mediation Workshop for Directors – St. John's

North Alberta Chapter:

October 19 – Seminar: Better Budgeting – Edmonton
November 9 – Seminar: Ask The Experts – Insurance Panel – Edmonton
November 17 – Lunch n Learn: Flood Prevention – Edmonton

North Saskatchewan Chapter:

October 20 – AGM and Seminar – Saskatoon
November 17 – Seminar: Topic TBA – Saskatoon

Nova Scotia Chapter:

October 22 – 200 Level Course – Halifax

South Alberta Chapter:

October 20 – Level 200 Course – Calgary
October 26 – Lunch n Learn – Calgary
November 24 – Lunch n Learn – Calgary

Toronto & Area Chapter:

October 20 – TwitterChat: Security in Condos
November 11&12 – CCI-T/ACO Conference – Toronto

Windsor Essex County Chapter:

November 16 – Seminar: Director/Owner Responsibility: Financial Management in Condos – Windsor

Chapters are adding new events all the time, check back with your local chapter to get an updated list of events in your area!

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