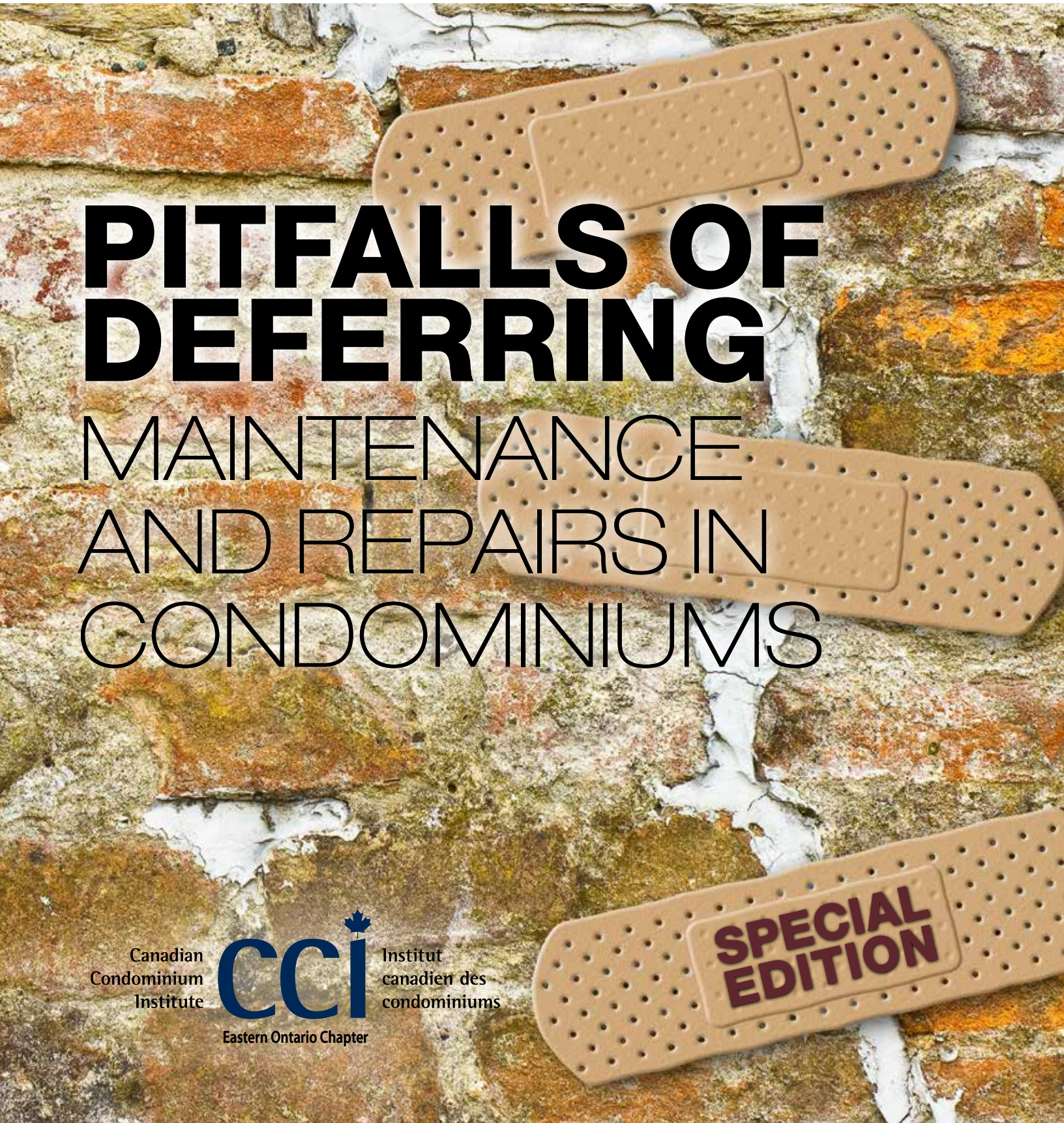
WINTER 2017

CONDOCONTACT

CREATING A VIBRANT, WELL-INFORMED EASTERN ONTARIO CONDOMINIUM COMMUNITY



PITFALLS OF DEFERRING MAINTENANCE AND REPAIRS IN CONDOMINIUMS

SPECIAL EDITION

Canadian Condominium Institute

CCI Eastern Ontario Chapter

Institut canadien des condominiums

WE ARE PROUD TO ANNOUNCE THE OPENING OF

Davidson Houle Allen LLP Condominium Law

OUR LAWYERS VALUE THE MANY TERRIFIC YEARS OF SERVICE we have provided to our clients while at Nelligan O'Brien Payne LLP, one of eastern Ontario's most recognized law firms.

As of January 1, 2017, we are proud to continue on with this tradition of excellence at our new firm: Davidson Houle Allen LLP. Our experienced condominium law lawyers provide effective advice in the following areas:

- Interpreting the Condominium Act
- Construction Deficiency Issues
- Tarion Warranty Claims
- Litigation
- Mediation and Arbitration
- Corporate Governance
- Interpreting Declarations, By-laws, and Rules
- Co-tenancy and Joint Ownership Properties
- Enforcement Issues
- Liens / Power of Sale
- Human Rights Complaints
- Employment/Labour issues
- Financing and Loans

Davidson Houle Allen LLP
Condominium Law

EASTERN ONTARIO'S CONDOMINIUM LAW FIRM

Need advice? We have answers. **Ottawa 613-231-8359 | Kingston 613-531-7905**

Visit our Condo Law News Blog at: **davidsoncondolaw.ca**

LUMENIX

WE MANAGE ALL ASPECTS OF YOUR PROJECT

Condo Experts

Most LED Installs in Ontario

0% Financing - Flexible Payment Plans

Free Light Audits & Gov't Rebate Quotes

CALL US TODAY FOR A FREE QUOTE!

1-855-586-3649

ACMO CCI Toronto and Area Chapter

WINTER 2017

CONDOCONTACT

CANADIAN CONDOMINIUM INSTITUTE
CCI Eastern Ontario (CCIEO)!

Canadian Condominium Institute | CCI | Institut canadien des condominiums
Eastern Ontario Chapter

P.O. Box 32001
1386 Richmond Road, Ottawa, Ontario K2B 1A1

Telephone: 613-755-5145

Fax: 613-755-4086

E-mail: info@cci-easternontario.ca

Website: CCI-EasternOntario.ca

Linked in: CCI Eastern Ontario

Twitter: @cciEastOntario

Operations Manager: Julie Klotz
jklotz@cci-easternontario.ca
Tel: 613-755-5145
Fax: 613-755-4086

INSIDE

Nancy Houle, LLB
President-CCI-Eastern Ontario
Lawyer/Avocate
Davidson Houle and Allen LLP

I hope that all of our readers are enjoying this winter season, whether by partaking in the Canada 150 events across the region (the ice-slides and zip-lines at Winterlude are always a hit), or curling up on the couch in your condo with mug of hot coffee or cocoa, and your favourite book or person!

However you celebrate the season, take the time to enjoy it, because with the coming of spring, change will be in the air! As most of our readers will be aware, the *Condominium Act, 1998* is being substantially revised, but will only come into force one the new Regulations pursuant to the Act come into force. Within the past few months, the Ministry has issued various draft proposed Regulations, including the proposed *Condominium Management Services Act (CMSA)*, inviting public comment, and suggesting that the objective is to have these drafts in force by the coming summer of 2017.

On January 25th, CCIEO held an open forum session to discuss the proposed CMSA and gather comments from our local community to provide to the Ministry. On February 6th, CCIEO summarized these comments, and on February 6th, I uploaded these comments to the Ministry. The comments from our community members were excellent! We hope that they will gain some traction with the Ministry and that we see some amendments before the Regulations are finalized.

Because of the significant upcoming changes in the industry, your Board has decided to prepare a special additional edition of *CondoContact* – to be released within the next several weeks – dedicated solely to the upcoming legislative changes in the industry, the likely impact of these changes, what these changes will mean for you, and how to prepare for them. We hope that you will find this upcoming special edition very helpful as you navigate through these changes.

As these changes loom closer, we are receiving many questions about what this means for individual Directors. The upcoming special edition will aim to provide further guidance, but I take this opportunity to confirm that there is no question that a certain amount of minimum mandatory education for Directors will be a requirement. We have yet to see what the minimum requirements will be, or the forums for delivery, but we feel quite strongly attending the CCIEO's Director's Course will put you on the path to fulfilling these requirements! [Our next course is being held May 6/7. These courses always sell out, and space is already filling up fast. We hope to see you there!]

As part of our ongoing commitment to education, your Board is also striving to continuously improve our seminars, and we are now thrilled to be able to offer our monthly evening seminars free to members! Part of this is due to the tremendous sponsors for each of our events, so please don't forget to take the time to visit the sponsors before or after your sessions or seminars, and get to know them, and how they may be able to assist your community.

We are also pleased to introduce the newest initiative to assist directors in gathering information, experience and tools to manage and administer their condos: CondoStrength! This is an initiative launched by directors, for directors, and we hope you take advantage of the wealth of knowledge and information of your local colleagues. [For more details, please read Constance's article at page 20.]

If you have any questions about opportunities to get involved with these initiatives, or have ideas for seminars or events, please don't hesitate to let us know. We are always interested in new ideas!

Until we see you again… enjoy the snow!

BECAUSE NOT EVERYONE IN YOUR CONDO PLAYS THIS NICE.

Whether you're a condo board member, property manager or owner, you need a law firm that can rise to the many challenges that can come your way. From governance and compliance to mediation and litigation, we provide practical, cost-effective solutions to meet your needs. Find out more at **www.condoadviser.ca**

GOWLING WLG
In tune with your world™

CANADA • U.K. • EUROPE • MIDDLE EAST • ASIA

Rod Escayola
Ottawa Law Firm Partner
Gowling WLG

And the beat goes on....

Dear readers,

We are very excited about this latest edition of Condo Contact! It's so full of good stuff, it's bursting at the seam!

We tried again to focus on a principal theme. This time, we put together an edition focused mainly on emergency situations. Indeed, while proper planning and maintenance plans go a long way to keep you sleeping at night, sometimes, things go out of whack. These situations are usually unpredictable but you can better react to them with… proper planning.

Unsurprisingly, one of the best ways to avoid mechanical or equipment failure (with corresponding expensive tabs) is to stick to a maintenance plan. **Justin Tudor of Keller Engineering** discussed the pitfalls of delaying work. **Patricia Elia and Kati Aubin of Elia** and Associate focuses their piece on the legal requirements to maintain and repair and the importance of doing this in a timely manner. The pitfalls are not always just mechanical: sometimes they come with a legal bill.

Annette Fleury of Eastern Ontario Property Management Group and **Paul Martin**, the Treasurer of OCCC No. 587 recount how they faced a real life-emergency when an explosion destroyed the building's main breaker switch and damaged the electrical vault. Imagine! You can't really prepare for that, we can all learn from how they managed this crisis. **Neil Scilley of BDO** provides some guidance on how to keep a healthy reserve fund, while **Christy Allen of Davidson Houle Allen** reassures us with a local legal victory where courts confirmed that they will respect board decisions made in good faith. **Constance Hudak** gives us more information about CCI's latest networking initiative called Condo Strength, while **John Olsthoorn** reminds us of the benefits of being curious about our neighbours before pulling the litigation trigger.

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 us 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 Julie Klotz, administrator for CCI-Eastern Ontario via email jklotz@cci-easternontario.ca or by telephone at 613-755-5145.

Keep up with us also on social media!

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:

The Editor
Condo Contact
Canadian Condominium Institute, Eastern Ontario Chapter

P.O. Box 32001
1386 Richmond Road
Ottawa, ON K2B 1A1
OR Email:
info@cci-easternontario.ca

By Justin Tudor, P.Eng.

Pitfalls of Deferring

Maintenance and Repairs in Condominiums

Condominium owners and directors are typically more aware of the maintenance costs and requirements of their buildings than their freehold-living counterparts. This is by virtue of legislation requiring that common element maintenance and replacement plans be considered through regular reserve fund studies. However, like the freehold owner who elects to put off their roof replacement until next year, condominium corporations have also frequently elected to defer maintenance obligations, typically due to financial constraints, in the hopes that they won't be subject to one of the pitfalls of deferred maintenance programs.

Deferring maintenance can have measurable short term gains. Delaying repairs or replacement to building components or systems can be done to provide cash flow relief, meet budgetary expectations, or delay the non-financial impact of the project.

However, deferring maintenance also comes with risks and potential costs. Below I discuss 4 potential pitfalls of deferring required maintenance.

Pitfall 1: *Lack of consideration of the risks associated with emergency failure*

Properly forecasted and planned replacement and repair projects consider construction variables such as urgency and material delivery time. There are numerous systems throughout condominium complexes that require continuous operation and greatly affect the community in the event of unexpected failure. While considering deferring a repair or replacement project, a corporation must address the risk, adverse impact, and the additional costs that an emergency failure of the system could impose during the deferral period.

Envision a main breaker switch replacement that is deferred due to immediate budgetary issues. Properly planned, any scheduled shutdown of the power during the project is addressed by notification to the owners or by arrangements of temporary power. In the event of emergency failure, the risks associated with the potential lack of availability and costs of emergency power, coupled with the additional strain of dealing with a community that just lost power may be worth re-evaluating budgetary priorities on aging equipment where the negative impact of unexpected failure is so great.

Pitfall 2: *Uncontrolled or concealed continual degradation*

Individual building elements are part of an overall system that rely on the integrity and proper functionality of all components. A failed caulking joint around a window can lead to water infiltration that damages drywall and saturates insulation, resulting in heat loss at the wall assembly. Deferring maintenance of elements where the failure is damaging other, sometimes concealed, secondary elements without proper consideration of the costs and impacts of repairing these secondary elements will often result in significantly increased future maintenance and repair costs.

Consider a multi-level parking garage, where intermediate slab and landscape covered podium slab membranes have been knowingly leaking for years. Membrane repairs have been deferred because the comprehensive proper repair involves significant work to localized areas of membrane failure. In the interim, tarps and eavestroughing have been attached to the ceiling of the garage to manage the penetrating water and ensure it is not dripping onto cars below. Large cracks in the slabs have received a polyurethane crack injections. These interim measures can be installed for years in order to defer (and turn a blind eye to) a parking garage renewal project, however, as the concrete continues to be penetrated with water containing chlorides and chemicals, it will degrade at an accelerated rate. Concrete repairs cost make up a significant portion of any parking garage project and the time associated with executing and curing the concrete repairs are the largest factor when determining how long the garage will be partially or fully closed to traffic.

Countless localized and minor repairs projects have spiralled into large, multi-year, costly, and disruptive projects under the guise of deferred maintenance.

Pitfall 3: *Ignorance to volatility of material costs*

Reserve fund plans and condominium budgets expect costs to increase over time in line with inflation. When evaluating future costs of deferred maintenance, condominiums often look to the local construction price indices which indicate year over year general inflation. However, materials or equipment that are related to a specific commodity, such as aluminum in high-rise windows or petroleum in asphalt, may see price increases over a relatively short period of time that fall outside the range of the general forecasted inflation rates.

Window frame replacement projects that were deferred from 2013 to 2015 would have expected a general construction price increase of 2.3% (Statistics Canada), however, aluminum prices varied significantly in this period, increasing by 17% at their peak. Although aluminium does not make up the entirety of these projects, over a 2-year period, the changes in material costs affected overall construction costs, resulting in an estimated increase in project cost of 6%. These unexpected changes could negate the original benefits of deferral altogether.

Pitfall 4: *Life-extending repairs associated with deferral does not return an appropriate benefit*

Occasionally, useful service lives of aging elements can be extended with minor to moderate repairs, thus reasonably deferring their subsequent major overhaul or replacement. The cost and scale of these life-extending repairs must be evaluated in relation to the benefit or savings of their deferral. The cost of the life-extending repairs may not be reasonable when considering the amount of time that the repairs defer the subsequent project.

Older aluminium window systems, depending on their exposure and use, have a typical service life of 35-50 years. As they age, the insulated glazing unit seals fail, their external sealants deteriorate, their hardware and mechanisms fail, their locks seize, and their weather stripping is no longer functional. These failures can result in decreased overall performance exhibited by heat loss, air exfiltration, and water penetration. All these elements can be replaced without replacing the frames; glass can be replaced with new, hardware can be swapped out, mechanism can be lubricated. The cost of these refurbishments will always be significantly lower than a complete window frame replacement, however, if the value of the refurbishment is 35% of the value of the future replacement, and is only expected to extend the service life of the windows by 25%, consideration should be given to dealing with the window elements as a whole, without delay.

Managing Risk

Deferring repairs and assessing priorities is a part of building management and operation. The money isn't always available every year, and if it is, it may not be in the best interest of the community to carry out a specific project at a given time. Ontario condominiums are fortunate that with a comprehensively monitored and followed reserve fund plan, a reasonable contingency, and a detailed eye towards an appropriately managed maintenance contract, the need for deferral is often mitigated.

All project deferrals contain risk, which are evaluated by the probability of failure in relation to the impact of failure. In the examples above, we've suggested cases where the risks were either improperly managed or ignored altogether. A comprehensive review and preventative maintenance inspection should be performed when considering any deferral to ensure that you do not get trapped in one of the pitfalls. ■

Justin Tudor is a professional Engineer. He is the vice-president of Keller Engineering, a well known engineering firm in Ottawa. Over the past 30 some years, Keller Engineering has worked on a wide range of condominiums across Canada, performing reserve fund studies, performance audits, building investigations and recapitalization projects.

Sources: Statistics Canada, CANSIM, Price indexes of apartment and non-residential building construction, by type of building and major sub-trade group, 2016-11-08.

Proper Investment is a Great Way to Keep a Healthy Reserve Fund

By Neil Scilley

Who would you rather pay for the new roof on your high rise building or the new road in your townhouse community: you and your neighbors, or the banks? It's a legitimate question, but one that doesn't always receive its due consideration.

A condo director's time is a scarce resource. As with many volunteer positions, serving as a director on your condo Board can often feel like a full time job (just without the paycheque). Between communicating with neighbors, fielding complaints, budgeting, reviewing expenses, signing cheques and the like the responsibility that comes with keeping things running day-to-day can be onerous enough without getting bogged down in what problems might arise five, ten or twenty years from now.

Unfortunately, for many, it is only when one of those problems surfaces and can no longer be ignored that the true worth of a long term view becomes apparent.

Having a strong reserve plan can make dealing with unforeseen emergencies considerably less painful. Whether it's a project that becomes necessary years early or one that goes dramatically over budget, a well-funded reserve will help soften the impact of these surprises in the short term. Developing that plan, however, is not only the responsibility of your engineer. The recommendations and guidance in your reserve fund study are critical, yes, but that report is only one element to sound reserve planning.

There are a number of elements that make up a good reserve fund plan: consistent, manageable contributions; a reasonable timetable for expenditures; thorough costing of projects. These are the main elements of the funding plan which typically receive the most attention and scrutiny. One element that often gets overlooked, however, is the allowance for investment income.

For all practical purposes, the changes to the Condominium Act with respect to the vehicle in which a condominium corporation can invest its Reserve Fund are negligible.

Under the Act, condo corporations are permitted, though not required, to invest in Canadian securities that are either government issued or guaranteed, or securities issued by financial institutions which are located in Ontario and insured

under either Canadian or Ontario deposit insurance. No stocks, no corporate bonds, no mutual funds – the intent is to eliminate the lost opportunity that comes from having hundreds of thousands or millions of dollars sitting idle while at the same time ensuring that owners' money is not subject to unnecessary risk.

With the security these restrictions provide, forming and following an investment plan can essentially hand the condo thousands of dollars in investment income. Free money from the banks means less money coming out of the owners' pockets, which in a way can make investing the one role of a director (who some at times forget are owners too) that isn't performed without reward.

Typically, interest rates on these types of investments are on the lower end of the 1-2% range depending on a few factors including term. At a glance that return may sound small, but as reserve funds grow into the high six or seven figures and are planned over a ten, twenty or thirty year horizon, the gains can be substantial.

There is no requirement that a condo pursue an investment plan, but if your Board does make that choice there are some important elements to consider in moving forward. The Act requires that the Board develop a formal plan for investing the corporation's funds before acting, though it does not specify precisely what that plan must entail. Condominiums are all different, and even very similar neighboring properties can face very different circumstances and obligations. Here are some basic points to contemplate in deciding what will work best for your corporation:

1 How much do you have today and how much is coming in annually?

Your reserve fund study is your guide, of course. Once your funding plan is adopted and minimum contributions become known the Board will know what resources it has available to fulfill the reserve's obligations on a year to year basis. There is very little guesswork here – the inflows are set in stone.

2 What are your short-term (3-5 year) cash flow requirements?

The outflows, on the other hand, can be rather unpredictable. While your reserve fund study is a valuable guide, quite often actual results will differ, even in the short term. Some projects become priorities and are moved ahead, while others can safely be deferred. Some costs come in under estimate, while others go over budget. While eliminating these variables over the long term is impossible, re-evaluating them on an ongoing basis can reduce their impact. Has the Board made decisions to pursue specific projects? Do you know what those projects will actually cost? Over what period will those bills be paid? This information is pertinent to ensure that sufficient cash is available when needed.

3 How much cash do you want to keep available to deal with the unknown?

Even a well thought-out plan can go awry when an unexpected expense arises. Nobody can predict when the water main will break, as an example, and a $30,000 bill will land in the corporation's inbox. As a Board, determine an appropriate amount to keep liquid in case of emergency or other unanticipated need.

4 Identify your investment opportunities

Research is valuable, of course, but even a quick call to your bank can present some immediate opportunities. Talk to your property manager. They surely have other corporations who have pursued investing and can solicit this information on your behalf quite easily. Find out what kind of return you can expect and over what period.

5 Share your plan with your reserve fund planner

Once the Board has established a plan, discuss your goals and expectations with the consultant preparing your reserve fund study. The rate of return on your reserve is an often overlooked element of the funding plan, and can lead your reserve far off track if the Board and the engineer are not on the same page. If you don't have an investment plan, make sure your engineer knows this, and ask them to modify their projections accordingly.

Most commonly, reserve fund studies estimate a two (not impossible) to three (rather optimistic in today's market) percent return on the full value of the fund at any particular point in time. If the funding plan's assumptions and the investment plan's approach are not in sync a wide gap can emerge between the study's estimates and reality. This could occur even if all of the planned contributions are made, only the projected work is undertaken and all of that work is done for no more than the estimated cost.

To take a simple example, assume a reserve fund worth $500,000 today where the reserve fund study assumes an investment plan yielding 3%. Over the three years between now and when the next update is due, the contributions from the common fees are expected to match the necessary expenditures. With a bit of luck, they do. No emergencies arise and no projects go over budget. The corporation's money, however, sits idle in a chequing account earning negligible interest. By the time the three year update is completed, this reserve fund will be nearly $50,000 behind where it was expected to be. A significant increase in the common fees or a special assessment may be recommended in the next study to make up this shortage, one which came about due only to foregone opportunity.

Investing can be a very valuable tool in helping a condominium fulfill its obligations while reducing the financial demands it places on its owners. If pursued effectively, it can mean thousands of dollars annually towards funding the corporation's reserve. Put differently, thousands of dollars staying in your and your neighbors' household budgets rather than that of the condo corporation. ■

Neil Scilley is a Chartered Professional Accountant and Accounting and Advisory Manager at BDO Canada, one of the largest national accounting and advisory firms in Canada. He is the creator of BDO's Condo Dollars and Sense seminar for condominium directors and has over 10 years of experience advising clients in a number of industries, specializing in accounting and audit issues for condominium corporations.

CASE CONFIRMS BOARDS CAN RELY ON BUSINESS JUDGMENT RULE

By Christy Allen

A recent Ontario Court of Appeal decision confirmed for the first time that the "business judgment rule" applies to decisions made by condominium boards. The business judgment rule "recognizes the autonomy and integrity of corporations, and the fact that directors and officers are in a far better position to make decisions affecting their corporations than a court reviewing a matter after the fact."

In confirming that this rule applies to condominiums, the Court of Appeal set out the test for reviewing decisions made by condominium boards. The test is to confirm that the directors acted honestly and in good faith, and that the board acted reasonably in coming to its decision. But in determining whether a board acted reasonably, the question is not whether the reviewing court would have made the same decision, but rather whether the board's decision falls on the spectrum of reasonable possibilities.

If a court concludes that the board did act reasonably (given the circumstances), honestly and in good faith, the court will defer to the board's decision. In other words, where the test is met, it would be inappropriate for a court to interfere.

The landmark case

The precedent-setting case, Carleton Condominium Corporation No. 375 v 3716724 Canada Inc., started with an owner's request to make changes to the common elements. It then evolved into an oppression claim by that owner under Section 135 of the current Condominium Act (1998).

The owner possesses a number of commercial parking spaces located on the first level of the parking garage of CCC 375, which is a mixed-use condominium corporation. The commercial owner wanted to convert the use of the commercial parking spaces from monthly rentals to 24/7 pay-and-display use. This change in use required certain related changes to the common elements, which raised security concerns about the parking garage. In order to make the contemplated changes to the common elements, the commercial owner had to apply to the board for approval, pursuant to section 98 of the act.

As a condition of approving the contemplated common element changes, the board advised the owner that it required a full-time security guard to be hired at the owner's expense. The owner refused, on the basis that this additional cost would render the parking operation less profitable. The owner instead commenced its court application, alleging that the board had acted oppressively, by favouring the security interests of the residential owners over the financial interests of the commercial owner.

The application judge agreed with the commercial owner, and found that the board had acted oppressively by requiring the commercial owner to hire a "prohibitively expensive" security guard. The application judge found that because there were cheaper security options available to the board, which would, in the judge's opinion, adequately address the board's security concerns, the board had acted improperly by insisting on a full-time security guard.

On appeal, CCC 375 took the position that its board had acted honestly and in good faith by requiring a full-time security guard, and that the board's decision to require a full-time security guard was within the range of reasonable decisions in the circumstances. In overturning the application judge's decision, the Court of Appeal agreed with CCC 375's position, and in so doing the Court confirmed that decisions made by condominium boards must be given deference.

What it means

Prior to the CCC 375 case, there was little judicial direction as to the decision-making authority of condominium directors. In particular, it was unclear under what circumstances it would be appropriate for a Court to interfere with a board's decision.

By confirming that the business judgment rule applies to condominiums, and by articulating the court's test for reviewing condominium board decisions, the Court of Appeal has provided the condominium industry with much-needed guidance. The court clarified what requirements condominium boards must meet as they exercise their discretion under the act.

The Court's decision in CCC 375 should give condominium directors some degree of confidence that as long as they act reasonably, honestly and in good faith, their decision will not be overturned.

The decision effectively confirms that dissatisfied unit owners cannot get a "second kick at the can" by bringing their grievance to court on grounds of alleged oppression. Provided the board has met the above-noted requirements, such applications will not be successful. This is particularly relevant today, as the number of claims of unfair treatment made by unit owners against their condominium boards are on the rise.

The CCC 375 decision is also important for all condominium residents because it ensures that their boards understand their decision-making obligations. In particular, it confirms that boards must give fair, reasoned, consideration to all relevant factors surrounding a decision, including competing interests within a specific condominium.

The preceding article originally appeared in the October 2016 issue of CondoBusiness.

Of particular interest to CCIEO readers is the fact that CCC 375 is located in the highly urban Byward Market area of downtown Ottawa. Given its location, CCC 375 faces certain security concerns that are not uncommon to condominiums in similar urban settings, including higher crime rates, in general, per capita. It is against this backdrop that the above described case developed, was argued and was subsequently appealed. ■

Christy Allen is a condominium lawyer with Davidson Houle Allen LLP and represented CCC 375 in this matter, both at the Superior Court level and at the Court of Appeal.

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

Emergencies and the Pitfalls of Delaying Repair/Maintenance in Condos – Are There Any?

By Kati Aubin
B.A., (Hons), J.D

By Patricia Elia
B.Comm. LL.B.,
Adler Trained Coach

flash of lightning, the boom of thunder, the rush of rain! The howling of winter winds, bringing sleet and snow; pedestrians bent double to keep the bite of frigid air out of their faces, cars moving at a glacial pace to avoid dreaded black ice! A heat wave that seems destined to last forever, melting everyone and everything!

Life in Canada brings with it every manner of weather, all of it as dramatic as a soap opera. What does that mean for your condominium, exposed day in and day out to this drama? It means that it will require maintenance; and should an emergency occur, it means repairs. But who has the duty to maintain and repair – the condominium corporation, or the individual owner? Both the *Condominium Act, 1998* and case law set out responsibilities and timelines. Both the legislation and the case law confirm that the expectation is that condominium corporations will act reasonably, not perfectly. The definition of reasonableness, however, can lead to surprising results.

If a court concludes that the board did act reasonably (given the circumstances), honestly and in good faith, the court will defer to the board's decision. In other words, where the test is met, it would be inappropriate for a court to interfere.

Relevant Sections of the Condominium Act, 1998

Sections 89-22 of the Act sets out the obligations as between the Board and owners to repair and maintain both the units and common elements of a condominium. Below is a summary of the law as it is now and as it will be once the changes contained in Bill 106 comes into force. A full comparative chart of the old and new legislation is included below to see the exact changes side by side. You can find it at elia.org/index.php?option=com_content&view=article&id=375&Itemid=104

Currently, section 89 provides that the Corporation shall repair damage both to the units and the common elements. However, the obligation to repair after damage does not include an obligation to repair any damaged unit improvements. In determining what constitutes an improvement to a unit, reference is made to the Standard Unit Bylaw or Schedule describing a base unit. Essentially, the general rule under section 89 is that if a unit is damaged, the Corporation has the obligation to repair the damage, but does not have an obligation to repair any improvements the owner may have made to the unit. Under Bill 106, the new section 89 will only require the Corporation, subject to section 91 (which will be discussed in greater detail below), to repair the common elements, while the owner is required to perform repairs to the unit.

Section 90 deals with maintenance, and currently requires the Corporation to maintain the common elements while each owner has a responsibility to maintain their unit. The obligation to maintain includes conducting any repairs required due to normal wear and tear but not to repair after damage. Under the new section 90, the division of the obligation to maintain will stay the same, but any reference to normal wear and tear has been removed (thank heavens because of troubling caselaw) and the new section simply

notes that the obligation to maintain does not include the obligation to repair (yeah again!).

As one might expect, there is a provision of the Act that permits the general rules regarding repair and maintenance to be altered in the Corporation's declaration. This provision comes at section 91. As the Act is now written, a Corporation's declaration can alter the parameters in sections 89 and 90 by requiring that (i) owners repair their own units after damage, (ii) owners maintain the common elements, or a part thereof, (iii) owners maintain and repair the exclusive use common elements, or a part thereof, and (iv) the Corporation maintain the units, or a part thereof. Not currently in the language of section 91 is the ability of the Corporation to change the obligations under section 89 in the declaration to that the owner has a responsibility to repair the general common elements after damage.

Under the changes to section 91 in Bill 106, the declaration can alter the basic rules by requiring (i) the Corporation to repair the units, or any part thereof, (ii) the owners to repair the common elements, or any part thereof, (iii) the Corporation to maintain the units, or any part thereof, (iv) the owners to maintain the common elements, or any part thereof, (v) the Corporation to carry out an obligation to repair or maintain on behalf/for the benefit of an owner and add the cost of the repair or maintenance to the owner's common elements expenses, (vi) the Corporation to be responsible for the cost to remove/restore a unit or other property of an owner to carry out the obligation of the Corporation to repair/maintain, and (vii) the Corporation or owners to repair/maintain as prescribed. This kind of clarity will allow Corporations – if they are able to get the required majority – or developer's counsel, to draft with more precision on how to allocate risk between the unit owner and the Corporation. The challenge, in our opinion, will be to ensure that the legal descriptions and boundaries and Schedules to the Declaration provide enough consistency in drafting to bring the full intention of precision to the Corporation's documentation.

If an owner fails to maintain/repair as required under the declaration, section 92 of the Act currently states that the Corporation must do the work on the owner's behalf and charge the cost of same back to the owner as a common expense attributable to their unit where the owner fails to repair after damage, additionally where the owner fails to perform maintenance to the common elements, the Corporation may do the work and charge back the cost to the owner through common expenses. If an owner has an obligation under the Act to maintain their unit and they fail to do so within a reasonable period of time and the failure presents a potential risk of property damage or personal injury, then the Corporation may step in and do the work. An owner is deemed to have consented to this kind of work and the resulting addition to common expenses under section 92(4). By contrast, the changes to section 92 provides the same powers to the Corporation, but only if the owner has failed to maintain or repair pursuant to obligations under the Act. The new section 92 is silent on what remedies the Corporation has with respect to obligations to maintain/repair under the declaration. This is where Corporations have to be reasonable in providing the owner with enough time to maintain/repair, while effectively managing the risk associated with disrepair, including the possibility of injury and damage to property. Corporations can be creative in helping unit owners source reliable suppliers and allocate the risk clearly between the Corporation and unit owner, while allowing the owner to, in some cases, leverage the benefits of economies of scale.

We briefly note that section 123 deals with serious damage that is both unique and devastating to the condominium. There are notification and voting guidelines set out in the Act that help the Board and the owners deal with such catastrophic damage. This is an important section to keep in mind should your condominium experience such damage; however, for the purposes of this article, our focus is more on maintenance and repairs and a system each Board can implement to prevent such serious damage from occurring over time. It is important to remember that this section may trump other components of the Act and Declaration in the event of catastrophic damages.

Case Law: The Act in Action

In *Ryan v York Condominium Corporation No.* 340, 2016 ONSC 2470, the condominium corporation had been experiencing leaking and other water penetration issues for over thirty years prior to the action being brought before the court. The plaintiff, Mr. Ryan, purchased his unit in 1980 and was plagued by water penetration and mould issues. It was unclear as to how severe the problem was or how aware of the problem the Board was prior to 2010, but what became clear was that in March 2010 there was a storm and Mr. Ryan's unit sustained damage to plaster and parquet flooring. Letters were written to the Board to advise them of the damage, and thus began the problems between Mr. Ryan and YCC 340. The Board made efforts to mitigate the problem, but none of them worked and it was not until November 2014, when repairs were made that arrested the water infiltration, did the issues begin to abate. The Board took another year to finalize the removal of mould that followed upon the water penetration. While waiting for repairs that would fix the water entry and mould problems, Mr. Ryan was forced to move out of his unit to a family farm, some distance away from YCC 340.

It was reaffirmed by the Court that the standard expected of a condominium in these circumstances is reasonableness and not perfection (para 69 of the decision). Further, "whether a condominium corporation has breached its repair and maintenance obligations is a fact-specific inquiry in the particular circumstances." (para 71)

The Court reviewed the history of the interactions between the parties and the steps taken by YCC 340 to remediate the water penetration problem. It was noted that there were difficulties in applying a contextual approach to reasonableness, particularly given that "if one does a step-by-step analysis, then at any given step the conduct of the condominium corporation and the choices it made between making urgent repairs, temporary repairs, or permanent repairs was arguably reasonable." (para 72) The Court continued "If one examines the whole history and does not approach the facts incrementally, what emerges is that YCC 340 has had a known water penetration problem for over thirty years and has not fixed the problem. This is patently not reasonable." (para 73) This knowledge ultimately led the Court to conclude that "while one may have sympathy for the difficulties confronting YCC 340 in appropriately responding to the serious water infiltration problem, they did not address those difficulties reasonably and they breached their duty to repair damage." (para 74)

Compare the decision in *Ryan* to the decision in *Unsworth v Carleton Condominium Corporation 252*. In this Small Claims Court matter, the unit owner purchased a townhome condominium in November 2011 and took possession in January 2012. The first flooding in the unit owner's basement occurred in February 2012, and the flooding and back-ups continued a reported further ten times before the issue was dealt with. The final back-up involved raw sewage and took place in January 2014.

While these back-ups and floods were happening, the Board of CCC 252 first consulted with their usual plumber, and when the problem persisted, they contracted with two engineering firms. The plumber suggested that the Board continue with the course of flushing the line and noted that the problems likely stemmed from other unit owners improperly flushing things that should not have been flushed down the drains. Unfortunately, the back-ups continued, despite almost monthly line flushing as recommended by the plumber. The Board ultimately hired its first engineer in July 2013 who noted that there were structural problems with the lines and recommended replacement; the solution proposed by the first engineer was deemed too costly in the opinion of the Board, and it decided to stay the course with the recommendations of the plumber. A second engineering firm was retained in early 2014. Following the retention of the second engineering firm, the Board engaged in both sewer and foundation work to fix the problems. The Court found "the evidence shows that the Defendant did make efforts to maintain a flushing program, obviously in the hope of not having to spend more money to carry out expensive repairs/replacement." (para 70) Further, the Court held that the Board "took reasonable steps in all of the circumstances, one of the circumstances being that residents would obviously block the lines from time to time by flushing inappropriate objects down the drain." (para 70) . It is also important to note that the Corporation ultimately followed the engineers', advice not that of the plumbers. Corporations must hire professionals, as deemed under the Act, to provide advice. Where Boards follow the advice of suppliers, the Board risks being found to be in breach of its s 37 obligations and directors could find themselves personally liable. The Court considered the Ryan decision and held that "the distinguishing features, in my respectful opinion, are that the sewer line in question was blocked or partially blocked from time to time by foreign objects flushed down the toilet by residents unknown. Further, the Board of Directors of the Defendant relied upon advice from individuals experienced with sewers and it was not until [the first engineer] gave his advice to replace sewer lines in July 2013 that this remedy was put forward by an expert. My best calculation is that structural remediation took place less than one year from replacement being recommended." (para 73)

The main differences between *Ryan* and *Unsworth* seem to be (1) the Board in *Ryan* was aware of structural defects requiring serious action but took 4.5 years to remediate the issue, whereas in *Unsworth*, when the Board learned of the serious structural issue, it only took 1 year to take remedial action, and (2) there was no evidence to suggest that any owner action contributed to the issues in *Ryan*, whereas in *Unsworth* plumbers were identifying the actions of other owners (in flushing inappropriate items) as the cause of the problem prior to knowing that there were also structural problems.

It is important to remember that, as noted in Ryan, the Board is not expected to be perfect and respond immediately to costly issues requiring repair. However, the longer a Board is aware of an issue and chooses to not take action, the more it will open itself to liability.

Final Thoughts

So what is a Board to do?

We recommend to our clients that they should work with management to develop a full repair and maintenance schedule which much be adhered to. This directs the Board and management to be vigilant, proactive, and ready to respond; as an aside, it provides an excellent evidentiary record of reasonable behaviour by the board. This is part of solid corporate governance. Repair and maintenance, if vigilantly and proactively attended to, will result in longevity for assets, common elements, and units. Thinking ahead on coordination of maintenance and repair projects can also bring about economic efficiencies. Failure to adequately maintain and repair often has far more costly remedies that often outweigh the cost and length of a rigorous maintenance plan. Emergencies in respect of maintenance require timely action to manage and eliminate risk and often further damage. We strongly recommend hiring professionals who can back up their advice with insurance. Boards that do not seek professional advice and act in a timely manner on maintenance and repair matters could be exposing the community to heightened risk and it does not appear that Courts will tolerate unreasonable performance by boards. Keep calm, understand obligations and risks, and stay the course to ensure maintenance and repairs get done! ■

Kati Aubin focuses her practice on condominium and insurance defence litigation in representing condominium corporations and condominium unit owners in various levels of court.Kati is a member of the Law Society of Upper Canada, the Ontario Bar Association, the Canadian Bar Association, the Advocate's Society, the County of Carleton Law Association, and the Canadian Condominium Institute.

Patricia Elia is a senior lawyer with Elia Associates. In her role as a lawyer, she brings expertise in business and condominium law, together with a unique perspective as a condominium director and owner. She believes in empowering communities to grow and thrive. Patricia is passionate about the condominium industry because of the important role condominiums play in the lives of real people. Currently, she is working on a variety of industry related programs and committees with a view to facilitating awareness and knowledge for unit owners, directors, property managers and condominium communities as a whole.

CCI Eastern Ontario Chapter

PRESENTS A FREE SEMINAR

SECURITY, MORE THAN JUST LOCKS ON DOORS

February 22nd, 2017 from 6:30 p.m. to 9:00 p.m.

Hellenic Community Center, Hellenic Meeting and Reception Centre

1315 Prince of Wales Drive, Ottawa, Ontario

Free Seminar for Our Members!

Security, More than Just Locks on Doors

RESERVATIONS A MUST

Avoid Disappointment – Register Today

FEATURE PRESENTATION

Registration 6:30 – 7:00 p.m.
Seminar 7:00 – 9:00 p.m.

FREE for CCI – Eastern Ontario Members
Non-members - $50 plus tax

ALWAYS a very popular event, register today!

***NEW* – Registration is now available online.**
Please follow the link:
https://cci-portal.ca/events/februaryseminar
Or email forms to: info@cci-easternontario.ca

REGISTRATION FORM

Name:	
CCC #:	
Mailing Address:	
City:	Province:
Phone:	Postal Code:
Manager's Email:	
Registrant's Email:	

Canadian Condominium Institute — CCI — Institut canadien des condominiums

Eastern Ontario Chapter

P.O. Box 32001, 1386 Richmond Road
Ottawa, ON K2B 1A1
Tel: 613-755-5145 Fax: 613-755-4086
jklotz@cci-easternontario.ca Website: www.cci-easternontario.ca

For more information please contact the office directly at **613-755-5145.**
To view upcoming seminars, please visit the Chapter website at: **www.cci-easternontario.ca/news-events/upcoming-events**

DEALING WITH A Building Emergency

By Paul Martin, Treasurer for OCCC 587 and
Annette Fleury, Property Manager, Eastern Ontario
Property Management Group

OCCC587 and CCC217 are twenty-floor condominium towers in the west end of Ottawa. They are linked underground and share recreational and parking facilities.

When an emergency happens at a building, you hope that management and building staff are prepared to deal with it. Here's how our emergency played out.

The Incident:

At about 10:00 a.m. on May 8, 2013, work was being completed in the high-voltage electrical vault in OCCC587 when an explosion occurred. The explosion destroyed the main breaker switch for the building and damaged the electrical vault. Electrical service to the building was lost for ten days. Power to CCC217 and half of the shared facilities was not affected.

What residents heard in their suites was a loud bang and then the fire alarm bells ringing. A few minutes later, the sound of fire truck sirens and a smell of smoke confirmed to residents that this was a real incident.

From outside the building there was no mistaking where the incident had occurred. Smoke was billowing out of the parking garage closest to the electrical vault.

What happened next was organized chaos. Eight fire trucks arrived and they set up a command post. Hydro trucks, ambulance, police and an OC Transpo bus arrived as well. The Salvation Army and Red Cross arrived not long after with sandwiches, fruit, juice, etc. As power was still available in the party room, it was opened to residents as a safe place to conjugate as well as keep cool on the warm sunny day.

The property manager made three immediate phone calls. The first was to the consultant who had arranged the work in the electrical vault and he advised he was on his way. The second was to the owner of the management company at that time who then arranged for food and water to be brought to the site for residents that left their suite and additional management assistance was sent. Finally, the third call was to the insurance agent to report a potential insurance claim.

The building superintendent made an announcement over the PA system about three minutes after the explosion telling residents that there had been an explosion in the basement, that the fire department was on the way, and that they did not need to evacuate the building at this time. This timely communication was reassuring and probably saved a lot of unnecessary suffering by elderly residents and those with mobility issues who would have had difficulty getting down the stairs.

About 30 minutes later, there was a further announcement that fire fighters would be going door to door, floor by floor, to identify those who needed assistance to leave, and to take

them down in the elevators that were working on the building emergency power. People were told they could go to the party room in the shared facility, which had power. There were about 50 residents in the party room in the early afternoon.

Around noon, the fire chief called an emergency response meeting at which the corporation's consultant and property manager were in attendance. This meeting was to update everyone on the extent of the damages and the next steps.

At this time, the corporation's consultant was entrusted to work with the electricians to find a new breaker for the vault, but in the meantime, the building needed power. He located four generators through Gal Power that were available and were delivered by 6:00 p.m. Unfortunately, these four generators weren't enough to power everything in the building and staff were required to go door-to-door to turn off breakers to the stoves and air conditioning units and post notices not to turn them back on. Lights and refrigerators still worked and therefore residents did not lose any food (or very little) due to the power interruption. The building elevators also worked so residents could carry on a regular routine.

By midnight, all the power cables from the generators to the building electrical panel were hooked up. ESA approved the connections and limited power was restored to the building, a mere 14 hours after the explosion.

Things worked in the corporation's favor. A replacement breaker was found in Southern Ontario that could be modified to replace the old breaker, but it needed to be picked up and delivered to Ottawa. While the breaker was being transported, the electricians set to cleaning up the mess in the electrical vault and modifying the necessary items accordingly so that when the breaker did arrive, there wouldn't be that much of a delay restoring full power to the building.

Things that worked well

The response from the City of Ottawa emergency response team was excellent sending out first responders (fire trucks, ambulances) and then coordinating with OC Transpo, Red Cross and Salvation Army for resident assistance. The Ottawa Fire Services were onsite quickly and took control of the scene.

The response from building staff was also excellent. Staff had been trained in a building emergency protocol. They mustered at a pre-established point and received instructions from the superintendent of the affected building. They secured the site immediately and turned it over to the fire services when they arrived. Later in the day, under instructions from the electricians, they went to each suite to shut off and tape the 220-volt breakers for the heating/AC units and kitchen stoves, and put an ESA notice on the box that they were not to be re-engaged until further notice. Residents were advised that they were permitted to use the corporation's BBQ's and stove in the Party Room as they needed. Staff also distributed daily written notices prepared by the property manager to all suites, keeping residents up to date throughout the incident.

Residents responded with fairly good attitudes, checking in on each other in the early hours of the incident, and getting through ten days without air conditioning or cooking power.

The on-going relationships with contractors also helped. The building has worked with the same electrical contractors for several years – one for high-voltage work, and another for regular electrical work in the building. These relationships paid off. Both companies were on-site, they knew the building and worked closely together to get back-up power working.

The long-standing general building consultant used his contacts in the industry. He located a company that had some back-up power generators standing idle. He was able to coordinate getting the generators delivered, hooked up and working by the end of the first day. He was also able to locate a breaker switch of the type needed – a bit of a trick due to the age of the system.

Other factors worked in the corporation's favor:

- Most of the recreation facility and the party room get their electricity through CCC 217, allowing OCCC 587 to use the party room to shelter evacuated residents.
- The weather for the ten days that there was no air conditioning was benign, there were no intolerable temperatures.
- The generator company happened to have generators available immediately, which doesn't normally happen.

Overall, this was a condo triumph: A bad situation that was resolved quickly, efficiently and because residents were kept informed every step of the way, the incident did not have the impact on everyday life in the building that it might have done. ■

CondoSTRENGTH !

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

In the Fall Newsletter I wrote to you about "CondoSTRENGTH - An Important New Resource for Directors". It is a free program for Directors and by Directors where experiences and knowledge can be shared. As Education Chair for CCI Eastern Ontario I am at our twice annual training sessions for new Directors and we always receive more questions than can be handled by the panelists - these questions are often of the nature "How should a certain situation be handled? " or "What would you do if?". The panelists can answer in generalities but they don't know the specifics of the situation NOR does the questioner want to divulge too many details in a public forum. So what is the solution? It is CondoSTRENGTH - a private and confidential set of sessions where approximately 30-40 Directors can get together at a host party room and go into detail about a given set of experiences. The format would be to have up to 3 Directors who have had experience with a specific condominium challenge and then to have each of the Directors host a table and present their experience. Participants would move from table to table in groups such that they would walk away with a range of experiences and advice. CCI - Eastern Ontario will handle all the administration - advertising and registration, cost of refreshments, and will vet the presentations to ensure that the advice and material which is imparted is in line with the Act.

This "grass roots" approach is blossoming across the country. CondoSTRENGTH is being launched by chapters in all provinces and it has been going strong (pardon the pun) in Toronto for two years. We in Eastern Ontario are lucky in that we are able to share and use the many stories and experiences documented to date by the Toronto Chapter. So, not only would participants benefit from local experience but also from the largest condominium concentration in Canada.

The target date for our first CondoSTRENGTH presentation - 3 Directors - 3 ranges of experience is set for March 22. Our topic for launch will be "PROPERTY MANAGEMENT". Stay tuned for details !

We would also like to hear from you as to the following:

- Frequency? - you all have monthly Board meetings and then other CCI seminars - so would you want a CondoSTRENGTH event
  - monthly?
  - every two months?
- Topics - What topics are of most interest?
- Leaders - Do you have a story to tell - a success or a failure that would be useful to other and which you would be willing to share?

Remember - there is nothing new in the world of condos - it's just new to you !

Please e-mail your thought and ideas to us, info@cci-easternontario.ca. ■

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."

CondoSTRENGTH

CCI Eastern Ontario Chapter

PRESENTS A FREE SEMINAR

IT'S YOUR MONEY! ARE YOU IN THE KNOW?

March 29th, 2017 from 6:30 p.m. to 9:00 p.m.

Hellenic Community Center, Hellenic Meeting and Reception Centre

1315 Prince of Wales Drive, Ottawa, Ontario

Free Seminar for Our Members!

It's Your Money! Are You in the Know?

RESERVATIONS A MUST

Avoid Disappointment – Register Today

FEATURE PRESENTATION

Registration 6:30 – 7:00 p.m.
Seminar 7:00 – 9:00 p.m.

FREE for CCI – Eastern Ontario Members
Non-members - $50 plus tax

ALWAYS a very popular event, register today!

***NEW* – Registration is now available online.**
Please follow the link:
https://cci-portal.ca/events/marchseminar
Or email forms to: info@cci-easternontario.ca

REGISTRATION FORM

Name:	
CCC #:	
Mailing Address:	
City:	Province:
Phone:	Postal Code:
Manager's Email:	
Registrant's Email:	

Canadian Condominium Institute — CCI — Institut canadien des condominiums

Eastern Ontario Chapter

P.O. Box 32001, 1386 Richmond Road
Ottawa, ON K2B 1A1
Tel: 613-755-5145 Fax: 613-755-4086
jklotz@cci-easternontario.ca Website: www.cci-easternontario.ca

For more information please contact the office directly at **613-755-5145.**
To view upcoming seminars, please visit the Chapter website at: **www.cci-easternontario.ca/news-events/upcoming-events**

A Little Bit of Curiosity Goes a Long Way

By Johannus (John) C. Olsthoorn, B.A., GDCR

Life without even a little bit of conflict would be very dull indeed.

Let's face it. Sometimes legal action is the only option. More often than not going to court isn't the only option yet conflicts end up there anyway with a lot of time, money and goodwill spent unnecessarily regardless of who is deemed to be right in the end.

At the January 16 "Lawyers, Guns and Money" seminar, participants heard it is getting more difficult for condominium corporations to recover legal costs in court cases they won, a situation that seems to be trending. Board directors, property managers and owners alike can play active and important roles in reducing and diffusing disputes so that a situation does not get out of control and end up in court.

Living in a condominium community can be anything but dull especially when there's a dispute brewing. It doesn't take much: Noise, cigar smoke, an unleashed dog, the new-to-condo residents, you name it. There's no such thing as a new conflict, just one you haven't experienced before. And the dispute you have experienced before may lead you to make assumptions about your current situation.

When we feel something we value or care about is threatened

Here's an example, simplistic but it makes the point: Bob enjoys quiet evenings at home. For a week now, there are loud noises coming from the unit above him. He knows that no one new has moved upstairs. The lady living there is normally quiet. She does have a dog, but it is small, and has never disturbed anyone.

Our first reaction is to defend ourselves – normally people flee or fight

Bob could choose to ignore the noise and see if it will go away eventually, but it is starting to be really annoying. Fleeing isn't an option, so fed up Bob impulsively takes the fight route and with a broomstick, he bangs on the ceiling several times.

Our act of defense against a threat is often seen by others as an attack itself

Mary, who lives above Bob does indeed have small dog and loves her pet dearly. Mary works during the day and looks forward to her pet's company in the evening. She's bought a new toy for her dog. Mary rolls the ball along the floor in the living room and the dog loves it chasing it with the clanking sound it makes. All of a sudden, her neighbor Bob starts banging on her floor from below and the noise frightens her dog. Mary bangs her shoe heavily on the floor several times, angry that someone has upset her and her pet.

And their defense we see as a further attack

Bob hears Mary's stomping on the floor and is furious, and so the battle escalates. Complaints are made, accusations fly, well, you know how this can end up.

But it doesn't have to happen that way. And, to be honest, many disputes don't thanks to those on the front line – more often than not a condo's property manager –who deal effectively with common and not so common issues on a daily basis.

What can one do? Try something counter-intuitive by being curious in the beginning moments of a dispute. It is not what you usually expect and the results may surprise you.

Being curious means deliberately stopping for a moment and asking "is it really so?" Avoid jumping to the conclusion that it is so! Find out more. Ask questions. Is the threat really intended as such? Could there be something else going on that you haven't thought of? Often, the answers may reveal something different.

Had Bob stopped for a moment and instead of banging on the ceiling he'd been more curious as to what was going on, he may have found out early on that Mary was not deliberately trying to disturb his evening's peace. He could have taken a number of actions that would not have set the ball rolling – pun intended – to further conflict. The same could be said for Mary. Instead of stomping on the floor, she could have taken a more curious-driven path.

Not every situation is like this example, but you may be surprised at how many conflicts start as a misunderstanding, or someone misinterpreting another person's actions or intentions. We all make choices along the way – it is human nature to act or react to a situation that we feel threatens us. By opening yourself to wonder what really is going and verifying it, on instead of assuming it, you may find yourself in a better place, one that doesn't end up in court. ■

Johannus (John) C. Olsthoorn, B.A., GDCR, is a mediator and conflict coach serving Ottawa's condominium community. He also offers workplace investigation services. John welcomes condo board members, property managers and owners alike to contact him if they would like more information on how to effectively deal with disputes early on.

New Members

WELCOME TO THE FOLLOWING NEW CCI EASTERN ONTARIO CHAPTER MEMBERS

INDIVIDUAL MEMBER

Diane Scott

BUSINESS PARTNERS

Jordan Bianconi
Bassi Construction LP.

Andrew Ralph
Signal 88 Security Ottawa

Luc Rancourt
Rancourt Roofing Inc.

CORPORATE MEMBERS

CCC 456

Carleton Condo Corp 356

Carleton Condo Corp 139

OCSCC 711

OCSCC 836

OCCC 595

CONDOCONTACT
CANADIAN CONDOMINIUM INSTITUTE
Eastern Ontario Chapter

2016/2017 BOARD OF DIRECTORS

PRESIDENT
Nancy Houle, LLB
Nelligan O'Brien Payne LLP

VICE PRESIDENT/EDUCATION
Constance Hudak, MBA
National Representative

TREASURER
Stephanie Courneyea, CPA, CGA
McCay, Duff & Company LLP

SECRETARY/MEMBERSHIP/ACMO
Andree Ball
Keller Engineering

MEMBERSHIP
Ian Davidson
Condominium Management Group

NEWSLETTER EDITOR/EDUCATION
Justin Tudor
Keller Engineering

MEMBERSHIP
Kimberly Renwick
Condominium Management Group

EDUCATION/SOCIAL MEDIA
Michael Lewicki
Michael Lewicki Real Estate Broker

EDUCATION
Richard Elia
Elia Associates

CCI Eastern Ontario Chapter
PRESENTS A FREE SEMINAR

NO RESERVATIONS ABOUT RESERVE FUNDS

April 26th, 2017 from 6:30 p.m. to 9:00 p.m.

Hellenic Community Center, Hellenic Meeting and Reception Centre
1315 Prince of Wales Drive, Ottawa, Ontario

Free Seminar for Our Members!

No Reservations about Reserve Funds

RESERVATIONS A MUST

Avoid Disappointment – Register Today

FEATURE PRESENTATION

Registration 6:30 – 7:00 p.m.
Seminar 7:00 – 9:00 p.m.

FREE for CCI – Eastern Ontario Members
Non-members - $50 plus tax

ALWAYS a very popular event, register today!

***NEW* – Registration is now available online.**
Please follow the link:
https://cci-portal.ca/events/aprilseminar
Or email forms to: info@cci-easternontario.ca

REGISTRATION FORM

Name:	
CCC #:	
Mailing Address:	
City:	Province:
Phone:	Postal Code:
Manager's Email:	
Registrant's Email:	

Canadian Condominium Institute
CCI
Institut canadien des condominiums
Eastern Ontario Chapter

P.O. Box 32001, 1386 Richmond Road
Ottawa, ON K2B 1A1
Tel: 613-755-5145 Fax: 613-755-4086
jklotz@cci-easternontario.ca Website: www.cci-easternontario.ca

For more information please contact the office directly at **613-755-5145.**
To view upcoming seminars, please visit the Chapter website at: **www.cci-easternontario.ca/news-events/upcoming-events**

Canadian Condominium Institute | CCI | Institut canadien des condominiums
Eastern Ontario Chapter

SCHEDULE OF EVENTS
A YEAR AT A GLANCE
2016 17

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
Budgeting – It's your money, are you in the know?
March 29

APRIL
No reservations about Reserve Funds
April 26

MAY
Spring Directors course
May 6-7

Kingston Directors training
May 27

JUNE
ACMO/CCI-EO 5th Annual Conference
June 2

SEPTEMBER
6-9 Night with the Experts
September 27

OCTOBER
AGM plus seminar TBC
October 18

NOVEMBER
Fall Directors course
November 18/19

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.

LinkedIn CCI Eastern Ontario

@cciEastOntario

Visit our website CCI-EasternOntario.ca to gain access

ELIA ASSOCIATES

CRITICAL THINKING IN CONDOMINIUM LAW

BARRISTERS AND SOLICITORS | PC

303 Waverley Street, Ottawa ON K2P 0V9

Tel: 613.860.0800 Fax: 613.860.0804

Contact us today! Toll free: 1.866.446.0811 • Email: info@elia.org

Also with offices in Toronto, Barrie and Oakville

Simply the Best Condominium Insurance Choice

Over 35 years serving professional condominium managers and providing the best protection for corporations and condo owners.

For a Corporation Quote
877.627.6222
atrens-counsel.com

For Unit Owners Protection
Visit condogold.ca

Atrens-Counsel
Insurance Brokers
Part of Arthur J. Gallagher Canada Limited