

Volume 28

CONDOCONTACT

CREATING A VIBRANT, WELL-INFORMED EASTERN ONTARIO CONDOMINIUM COMMUNITY

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Managing Costs and Risks in Residential Condominiums

Condominium/
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Volume 28

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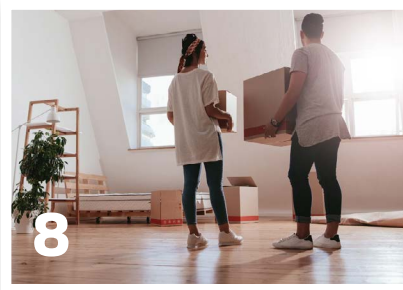
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Nancy Houle, LLB
President, CCI Eastern Ontario
Lawyer/Avocate
Davidson Houle Allen LLP

In our final newsletter of 2020, I focused on two words meant to bring us into the next year: strength and perseverance.

We are now a quarter of the way through 2021, and those words are even more fitting now! They have set the stage for what I think is one of the greatest features of condominium living: optimism that working together benefits all!

Having worked really hard over the past few months to consider the interests and needs of the condominium community in this new, and changing, environment, your Directors, Committee Chairs, and Volunteers are excited for what's coming up for our members, including: more virtual learning; expanding our reach with new speakers; innovative newsletters; and perhaps new and exciting venues for "live chats"! Watch for ongoing email blasts, social media posts, and our website so that you don't miss any of our upcoming sessions!

In consideration of the fact that our industry and our members are affected by the ongoing Pandemic, we have an opportunity to go against the trend of many organizations... Instead of raising our fees to raise capital to offset costs, we have voted to keep membership fees at all levels static, with no increase for the 2021/2022 year, and hope that we can increase sponsorships instead.

We feel this is the right thing for our community and our membership, and we do so with confidence in our budget going through the next year.

We know there are many challenges facing condominiums, from rising insurance costs, changes to the jurisdiction of the CAT, changes to the legislation, adjustments to property management educational requirements, and more. Yet the one constant that board members, managers, owners, and industry professionals can count on is that by working together, we can continue to overcome all obstacles for the greater good of our individual corporations and communities.

The Board of Directors is absolutely thrilled to announce the creation of the CCIEO Management Advisory Council. See page 19 for a listing of all Council members. The first meeting of the Council has already provided invaluable insight to the Board of Directors, and we look forward to many, many more such meetings.

I am already looking forward to my President's message for the final edition of 2021... and I can't wait to see what we have to celebrate!

Sincerely,

Nancy Houle, President CCI-EO



WELCOME TO THE FOLLOWING NEW CCI EASTERN ONTARIO CHAPTER MEMBERS

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Cheryll Wood, J.D., Lawyer
Davidson Houle Allen LLP



Michael Lewicki, Broker
Solid Rock Realty

Spring has arrived and we're back in lockdown... we hope that all our members are doing well, staying healthy, and leaning on their condo communities for assistance and support.

This edition of CondoContact focuses on insurance issues that condominium corporations are facing and how to navigate the increasing premiums that are being seen across the nation.



LEGAL: INSURANCE

A legal perspective – Are you wondering what steps the Corporation can take to minimize the impact of the insurance crisis? Look to Gareth Stackhouse's article on "Managing Costs and Risks in Condominium Insurance".



INSURANCE APPRAISALS

Do they make sense? William Shin provides an insurance appraiser's perspective on the value of annual appraisals.



OPEN LETTER TO THE INDUSTRY

Insurance Bureau of Canada (reprinted with thanks from CCI National's Resource Centre).

In this issue, we also have the following features:

- ✓ CCI National Update
- ✓ CCI-EO Professional Directory
- ✓ Q & A – our first edition of Condo Guru
 - Complex forms – what can be done?
 - Continuing with virtual board meetings; and
 - Passing rules.

We hope that you enjoy this edition of CondoContact and look forward to your questions for our next edition of Q & A, and if you have any burning condo questions, get them in early!

Sincerely,
Cheryll Wood, co-editor
Michael Lewicki, co-editor

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Contributing to CCI **CONDOCONTACT** 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 *CondoContact*.

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 product to condominiums and have relevant articles, let us know!

The subject matter should be current, concise and helpful. Topics should relate to management and operations of condominiums and not be of a commercial nature.

Articles may be forwarded to:

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Why do the Condo forms need to be so complex? Why can't they be simplified?

There has definitely been a lot of commentary on the complexity of the forms. In January and July 2020, the Condominium Authority of Ontario ("CAO") became responsible for the forms under the *Condominium Act, 1998*.

The good news: The CAO is accepting feedback. If you have concerns about the complexity of the forms or want to suggest a change, you can do so [here](#).

Also, we have received confirmation that the forms have now been uploaded in a more accessible format.

Is there something that we need to do in order to permit online Board Meetings?

Currently, there is a temporary provision in the *Condominium Act, 1998* that is effective until December 31, 2021 that permits virtual Board meetings.

There is also consideration being given to make the temporary provision permanent. However, if it does not become permanent, the Board can continue to meet virtually by consent or by passing a by-law to permit virtual meetings.

Can the Board just pass a new rule without asking owners?

Technically, yes.

What?!?

Passing of Rules is governed by Section 58 of the *Condominium Act, 1998*. This Section confirms that a Condominium Corporation's Board of Directors can make, amend, or repeal Rules for certain reasons.

HOWEVER: The Rules must be reasonable AND notice of the Rule must be given to owners. The notice must include a copy of the rule, the amended or repealed rule, along with confirmation of when the rule will become effective and confirmation that owners have the right to requisition a meeting under Section 46 of the Act (along with a copy of Section 46).

So, while the Board can pass a rule without asking owners, the Rule does not become effective until the day after the 30-day period for requisitioning a meeting happens OR if a meeting is requisitioned, the Rule will become effective on the earlier of:

- i. the time at which a quorum is not present at the first attempt to hold the meeting, and
- ii. the time at which a quorum is present at the first attempt to hold the meeting and the owners do not vote against the rule (by ordinary vote) at the meeting.

As a result, owners will still have a say, if they want to!

Disclaimer: The answers provided above are for information purposes and do not constitute legal advice. ■



Condominium/Strata Corporation Insurance Q&A

Insurance Bureau of Canada and the insurance industry recognize the seriousness of the insurance affordability issues some condominium and strata corporations and owners are currently facing. In response, the insurance industry has developed a Condominium/Strata Action Plan that will help find solutions to improve insurability. By working together with all stakeholders we believe we can help find solutions to stabilize insurance costs.

To learn more about the current situation, the Condominium/Strata Action Plan and what you can do now, visit ibc.ca/insurance-101/condo-action-plan.

This article is reprinted with the permission of the Insurance Bureau of Canada.

FREQUENTLY ASKED QUESTIONS

What is happening in the commercial insurance market that led to these challenges?

Coming into 2020, Canada's commercial insurance industry was experiencing challenges because of the following main contributing factors:

- An extended period of weather-related claims that were both more severe and more frequent
- Record-low interest rates (affecting investment income) and capacity withdrawal in certain commercial product lines.

The COVID-19 pandemic has compounded these existing insurance industry challenges and has created significant issues related to affordability and availability of commercial insurance in certain sectors.

This was confirmed in a recent report by Deloitte, "State of the Canadian Commercial Property and Casualty Insurance Market," which concluded that the challenges affecting the availability of commercial insurance are complex, with global macroeconomic factors and the ongoing COVID-19 pandemic compounding the issue. The report can be found [here](#).

We are also seeing costs rise for labour, due to a shortage of skilled tradespeople, and a rise in the cost of building materials, which contribute to the cost of claims and consequently property insurance premiums.

What other factors may impact the price of condo or strata insurance?

Insurance is about risk. Some properties may be viewed as higher risk

due to a variety of factors, which can affect the availability and affordability of insurance coverage. This can include:

- The **type of construction and the materials used** in a building's construction, including whether material is fire resistive (e.g. wood frame structures are considered higher risk).
- The **geographical location** of a condo or strata (e.g. buildings located on flood plains pose a greater risk of water damage due to overland flooding and for buildings located further north the risk of water damage from frozen and burst pipes is more prevalent).
- A **condo or strata corporation's claims history** (e.g. repeated water damage claims or multiple other claims). Inadequate maintenance can increase the number of insurance claims made by condo/strata corporations, which accounts for increases in premiums.

awareness about how insurers view risks and evaluate properties. The Risk Manager will provide information on how claims history, building materials and location can affect insurance rates. To date, the Risk Manager has been able to help a number of condo corporations in Alberta and BC secure insurance coverage.

- In January 2020, IBC launched a National Task Force on Commercial Insurance to bring together insurers, government and stakeholders to find common sense solutions to assist businesses, such as condo or strata corporations, in obtaining affordable insurance. The Task Force will release its final report with recommendations aimed at improving insurance availability and affordability in the commercial insurance market in early 2021.
- Consumer education aimed to helping condo/strata owners understand some of the challenges and what role they can play in managing insurance costs.



- Whether it is a multi-unit, multi-storey condo or strata, **multi-unit buildings** are more prone to water damage through accidental overflowing of toilets and bathtubs, as well as burst pipes and supply line failures.
- Whether **units are occupied by tenants** or owners. A unit occupied by tenants may not be maintained as adequately and repairs may not happen as quickly as an owner occupied unit.

What resources are available to condo/strata corporations with questions or concerns about insurance coverage?

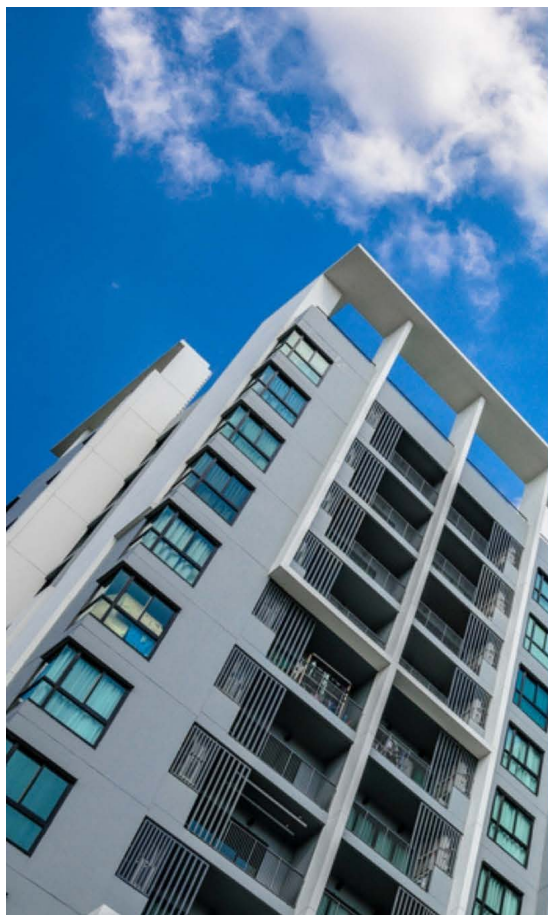
Earlier this year, IBC and its members launched a Condominium/Strata Action Plan to help address some of the concerns and issues facing condo and strata corporations. The plan includes:

- A dedicated Risk Manager who will work with a broker of record of a condo/strata and their respective condo/strata boards to increase

- Shared risk management information with a number of condo and strata corporation groups, including presenting webinars to corporation members.
- IBC encourages condo or strata corporations with questions or concerns about insurance to contact IBC's Business Insurance Helpline at 1-844-2ask-IBC. For more information, please visit IBC's dedicated web sites condoactionplan.ca or businessinsurancehelp.ca.

If you have any questions about your commercial insurance policy or want more details about the current market conditions, visit www.businessinsurancehelp.ca or call 1-844-2ask-IBC.

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Information Round-Up: Editors' Summary

Key Information and Resources from Across Canada

In our last newsletter, we compiled a list of articles, webinars, and blogs from across Canada related to COVID-19. We received positive feedback about this addition, so we have decided to make it a regular installation in the Newsletter.

We have reviewed webinars and other resources and provide a list below of some of the content that your condominium may find helpful.

Have you seen a webinar, article, or blog post that helped your condo? Let us know at info@cci-easternontario.ca



WEBINARS TO CHECK OUT:

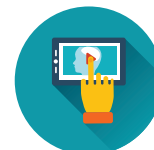
PAST

- CCI Eastern Ontario – [Condo Catch-Up](#)
- CCI Golden Horseshoe – [Rapid Fire Legal Q and A](#)
- CCI Huronia – March 30, 2021 – [Expansion of CAT](#)
- CCI Toronto – [Essential Rules and By-Laws](#)
- CCI-National – [Financial Statements Translating the Numbers](#)
- CCI-Eastern Ontario – [Speed Dating Condo Style](#)



UPCOMING:

- **May 6, 13, 20 & 27, 2021** – CCI Eastern Ontario – [Virtual Directors Course 4 part series](#)
- **May 28, 2021** – [National Leaders' Forum / Spring Conference](#)



RESOURCE CENTRE (CCI NATIONAL):

LEGISLATIVE NEWSFLASH

- [Legislative Newsflash](#) – Bill 118, Now proclaimed [Occupier's Liability] – **February 2021**
- Additional Legislative newsflashes about:
 - [Ontario Extends Time for Virtual Meetings and Voting](#)
 - [Residential Tenancies](#)
 - [January 2021 COVID-19 Updates](#)
- [The Silver Lining – Condominium Meetings and Accessibility](#)
- [Business Partner and professional directory](#)

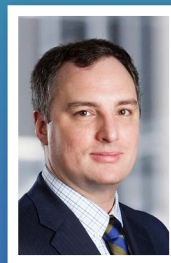
RECENT CASES:

Are you curious about recent case law from across Canada? Check out [Condo Cases Across Canada](#), published by Jim Davidson exclusively for CCI members. The website is available to CCI members. The current password is **"condocases"**.

Also

don't forget the law blogs out there providing timely and relevant information related to the condominium industry.

Managing Costs and Risks in Condominium Insurance



Gareth Stackhouse

Insurance and insurance costs have been a live issue in recent years, with some insurers exiting the condominium market, and that, plus market conditions, has led to a rise in premiums and deductibles. Condominium Corporations being unable to get insurance has made the national news cycle.

As a defensive play, insurance costs and risks can be managed through a properly drafted standard unit, insurance, and maintenance by-law made under the *Condominium Act, 1998* (the "Act"). This type of by-law puts these related items into a single by-law and can be the single reference point for managers, boards, contractors, residents, and insurance adjusters every time there is an "event of damage". It can prevent conflicts about costs, repairs, and responsibility (saving time and money) and it provides certainty for all parties, including the condominium's insurer, where uncertainty will drive up costs.

A well-drafted by-law could have prevented the lengthy (and no doubt costly) litigation in the recent *Lozano v. TSCC 1765* case. This case is a great illustration of the risks and costs related to insurance, damage, and maintenance in condominiums.

Lozano v. TSCC 1765 (2021 ONSC 983): The Divisional Court decision in *Lozano* was released in February 2021. It was an appeal of a lower court ruling by the unit owners' insurance company that "subrogated" the claim and funded the litigation. The insurance company originally sued the condominium over a \$10,022.33 repair charge-back related to a leak.

Briefly, *Lozano* reviewed the following questions:

- Did the unit owners' act or omission cause a toilet to leak and what does "act or omission" mean? and
- If yes, can the condo charge back the costs of repair/insurance deductible under TSCC 1765's section 105 by-law?

A year prior to the leak that caused the damage, the unit owners replaced toilet parts themselves. In November 2018, the owners left the unit for five months and only had someone inspect it every two weeks. Most importantly, they didn't shut off the water to the toilet when they left.

The Divisional Court found that the "omission" was that the unit owners did not shut off the water during an extended absence (no water, no leak) and that leaving the unit uninspected and unoccupied for 13 of every 14 days was "an obvious act or omission". TSCC 1765 was able to recover the costs.

The *Lozano* case (and costs) could likely have been avoided if TSCC 1765 had had a by-law that contained a waiver of subrogation, rigorously defined "act or omission" for a section 105 chargeback, and

set maintenance standards about fixing toilets, turning off water, and inspecting empty units.

Let's explore the components of a standard unit, insurance, and maintenance by-law:

Standard Unit: Where a condominium must repair a unit, repair costs and insurance premiums can be controlled through a well-defined "standard unit" which classifies high wear, frequently upgraded, and high-cost items as "improvements" which a unit owner is responsible to repair and insure. This usually includes defining items like floor coverings, cabinets, counter tops, equipment, and appliances as "improvements" to a unit. It also sets the standards for replacement materials and can restrict these to "builders' grade" in order to further control costs.

Insurance Deductible and Requirements: There are four main components to a good insurance by-law, as this writer sees it, all of which lower the costs for a condominium:

- 1) Expand insurance deductible recovery (Section 105 of the Act);
- 2) Set the insurance deductible recovery standard closer to that of "strict liability" and rigorously defining what the words "act or omission" mean;
- 3) Waiving rights of subrogation; and
- 4) Setting insurance requirements for unit owners and tenants.

Some Condominium Corporations may have insurance deductible provisions, maintenance standards and waiver of subrogation in the Declaration or multiple by-laws.

Without a Section 105 by-law, a condominium can only recover costs related to damage to a single unit that is caused by a person's act or omission, the costs being the lower of the repair costs or the insurance deductible. Section 105 does not allow cost recovery where other unit(s) or the common elements are damaged unless a condominium passes a by-law!

With high deductibles and damage events (especially floods) easily spreading to other units and the common elements, a Section 105 by-law is very important for cost recovery and insurance cost control.

A Section 105 by-law expands on the Act and allows a condominium to recover the lower of the insurance deductible or repair costs when there is an event of damage to any unit(s) or the common elements which is caused by an "act or omission" of a unit owner or a person they are responsible for (like their tenant or tradesperson), whether

the damage starts in their unit or somewhere else. The by-law can also define what "act or omission" means and move the standard closer to "strict liability", which means being liable simply because an event occurred. This helps to prevent legal battles about what someone did or did not do, as in *Lozano*.

"Subrogation" is the ability of an insurance company to sue in the name of the party they insure. A "waiver of subrogation" in a by-law is important to control costs by removing an insurance company's ability to sue a condominium over a \$10,000 insurance deductible where the insurance company disputes a condominium's charge-back decision (like *Lozano*). Litigation is costly and complicated for a condominium.

Finally, a by-law can help lower costs and premiums by setting standards requiring that all unit owners and tenants have proper insurance coverage in place for the unit's improvements, their personal property, and their living/business expenses.

Maintenance Standards: The Act allows a condominium to set maintenance standards through a by-law, and having a clear and strong set of maintenance standards for unit owners to follow for their unit, their fixtures, and appliances is another tool in preventing damage, establishing liability, and being clear about what a unit owner must do.

A maintenance standards provision can require regular inspections of the unit when an owner is absent and routine inspection or replacement of items that wear out and fail, to help detect and prevent issues before they cause catastrophic damage. A maintenance standard provision can also resolve repair disputes where a lack of maintenance is the cause of the damage and could have been very helpful in the *Lozano* case.

Hopefully, this information can assist you and your condominium(s) to control insurance costs and minimize insurance and damage-related risks.

[Editor's Note: The proposed changes to the *Condominium Act, 1998* remove the ability of a condominium corporation to pass Insurance Deductibles By-laws. This means that to extend the circumstances where an owner is responsible for the deductible, there will need to be an amendment to the Declaration. Existing By-laws might be grandfathered but we do not have guidance on this yet. Some Condominium Corporations may have insurance deductible provisions, maintenance standards and waiver of subrogation in the Declaration or multiple by-laws. This article highlights the need for condominium corporations to review its governing documents to ensure that it is minimizing insurance risks.]

Gareth is a lawyer with Common Ground Condo Law and serves clients across Ontario, is active in numerous CCI chapters, ACMO, and he frequently writes and speaks on condominium topics. He has called small-town Ontario (the Ottawa Valley and the near "north"), Kingston, Halifax, and Toronto "home". ■

Review Your Insurance Annually



William Shin

One of the largest expenses your condominium will face on an annual basis is your insurance premium, especially given the hard market we are in. Unfortunately, we also expect to see higher-than-normal increases in construction costs for 2021, with Eastern Ontario facing some of the largest increases nationwide. In fact, compared to the year-over-year national average, Ottawa has experienced the highest increases, with construction costs rising between 4% and 10% for both residential and non-residential properties.

Your condominium's insurance premium reflects a dollar figure that appraisers refer to as the Total Insurable Value ("TIV"). This value is defined as the full replacement cost of a property and should include the cost of materials, labour, and professional fees, by-law and building code revisions, demolition and removal expenses, taxes, and inflation.

Here's the catch: These costs fluctuate, so it's important to review the adequacy of your coverage on an annual basis. An insurance appraisal ensures that you are not only paying accurate premiums, but also delivers peace of mind that your condo is sufficiently insured in the event of a total loss.

Historically, we have seen both increases and decreases in construction costs. An extreme example of this is the stock market crash in 2008, where the lending market was overextended on junk bonds fueled by the frenzied real estate market. When the housing market bubble burst, it caused a domino effect on the stock market due to massive real estate investments that companies had tied their money to.

As a result of the crash, demand for housing and new construction dried up, and construction, including ongoing jobs, came to a screeching halt. This caused a significant disruption in building costs, leading to double-digit fluctuations first down and then exponentially back up in the years that followed.

In today's construction market, we are seeing big increases largely due to soaring lumber costs, high demand for housing, shortage of labour, and ongoing COVID-19 implications, along with an already robust real estate market. Ontario, in comparison to other provinces, is seeing the highest increases and this can be attributed to the sheer number of new developments and the pent-up demand this has created.

It is important to note that changes in construction costs may not be as drastic as the examples mentioned above. The construction industry is a free market, and materials to rebuild and labour costs are subject to the fluctuations caused by supply and demand. The cost of your condo's insurance premium directly correlates with these ebbs and flows, which is why it is essential to have your appraiser review the adequacy of your coverage annually.

Having an annual appraisal done has additional benefits to your corporation. First and foremost, you are fulfilling your fiduciary duty

to property owners as per the *Condominium Act, 1998* to have insurance equal to the replacement cost of the property. Having sufficient insurance coverage reduces your liability and financial risk and ensures your premiums are consistent with market conditions.

A recent case from British Columbia provides an example of why it is important to have sufficient coverage. In August 2019, a condominium in BC experienced a total loss due to fire. During the rebuild, the owners learned that they were underinsured by \$3.2 million. As a result of this insufficient coverage, each unit owner faced special assessments ranging from \$36,000-\$57,000 to make up for the deficit.

On the other hand, an up-to-date appraisal takes into account the potential downswings of the costs to rebuild. The fluctuation may be a result of changes in building price indices or changes to by-laws and building codes, among other things. We have seen cases where condominium corporations were carrying excessive replacement costs and as a result overpaying on their insurance premiums.

Some condominiums may also be subject to a co-insurance clause when they do not have an up-to-date replacement cost. The corporation would be responsible for self-insuring a percentage of the property, having to pay out of pocket for a partial or total

loss. This is typically in addition to their deductible and can put a substantial amount of financial burden on owners if there was destruction of property. To put this in perspective, a high-rise building insured for \$100 million with 500 owners collectively at 10% co-insurance, equates to \$20,000 per owner in the event of a total loss. These figures assume the condo was sufficiently insured to begin with; if not, the deficit per owner could be higher.

While we hope that we are never faced with a major disaster, the results of being underinsured can be devastating. Avoid the gamble of exposing your condominium to unnecessary risk by having an insurance appraisal done on an annual basis.

William is the Business Development Associate for Normac, specializing in insurance appraisals. He has a Bachelor of Arts in Economics. An active member of the condominium community in Ontario, William is involved in the Canadian Condominium Institute (CCI) Golden Horseshoe, Grand River, Toronto, and Eastern Ontario chapters. He strives to deliver a high level of service by ensuring the appraisal needs of his clients are met with the utmost satisfaction. ■

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Speaker
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Other topics covered during the conference include:

- **What should your Board's To Do List look like?**
- **What should you look for when hiring a property manager?**
- **Is it time to change your governing documents?**

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CCI Eastern Ontario Chapter is excited to announce the creation of the new **Management Advisory Council!**

**THIS IS A BRAND-NEW
COMMITTEE WITH CCI-EO
AND IT MET FOR THE
FIRST TIME ON APRIL 22**

THE COUNCIL'S MANDATE IS TO:

- **promote membership with CCI Eastern Ontario to condominium corporations in Eastern Ontario;**
- **advise on options for value added benefits of membership;**
- **advise on possible improvements and enhancements to director education;**
- **advise on submissions to the municipal or provincial government concerning current or proposed legislation (where applicable).**

COMMITTEE MEMBERS ARE:

Noah Johnston	Sentinel Management
Yawar Khan	Capital Integral Property Management
John Fitzgerald	Apollo Property Management
Michelle Compton	iCondo Property Management & PMA Realty Consulting
Anne Burgoon	Eastern Ontario Property Management Group
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Leaders' Forum: National Conference of the Canadian Condominium Institute



Andrée Ball



Constance Hudak



Check out our
May 2021
Conference
[here:](#)

As mentioned previously, CCI-EO is one of many chapters across Canada which together form the National Canadian Condominium Institute. CCI National is gearing up for its annual conference on Saturday, May 29, 2021. The conference will be open to all Board Directors from CCI chapters across the country. Because of the necessity to “distance” and convene only virtually, you all have the opportunity to participate in this event.

Join condo/strata owners, boards, property managers, and professionals in the industry for a jam-packed day of information and tips shared by our knowledgeable group of speakers from across the country. This spring, we will take a look at the “gap” that 2020 created and plan for 2021 and beyond. Our keynote speaker Jennifer LaPlante, one of Data IQ's 2021 Top 100 Influential People in Artificial Intelligence, will explore how artificial intelligence is and can be used in our condos/stratas and the benefits and risks to those living in and managing these environments. Join our “Ask the Expert Panel”, which will give you an opportunity to ask those burning questions to various condo/strata industry professionals. Find out what's new with respect to condo/strata Insurance and what the Courts have been saying about condos/strata issues. Other topics covered during the conference include:

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*Constance Hudak, CCI-EO Director & CCI-EO
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-  **Did your corporation undertake any important projects recently?**
-  **Do you have a success story?**
-  **Did you learn lessons the hard way?**

Whether you are a director or a property manager, please do share these valuable stories. Feel free to contact CCI and we will assist you in writing your article.

By sharing your experience we learn from the past and improve our collective futures.

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