

SUMMER 2015

# CONDO CONTACT

CREATING A VIBRANT, WELL-INFORMED OTTAWA AND AREA CONDOMINIUM COMMUNITY

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**Condominium's Role in  
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# WINDOW PROBLEMS?

*Do not replace them!*

**FENESTRA<sup>MD</sup>** *refurbishment*

The alternative to replacement

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## President's Message



In June of 2012, the Ontario government announced its intent to review and revitalize the Condominium Act, 1998 (the "Act"). After an extensive consultation process, and the production of a detailed report recommending over 200 revisions to the Act, the proposed reforms to the Act passed first reading on May 27, 2015. The proposed revisions include a sweeping reform of the Act, the introduction of new legislation governing licensing of managers, and changes to other legislation affecting condominiums (for example the Ontario New Home Warranty Plan Act). While there is already some debate in the industry concerning some of the proposed revisions, there is no question that all stakeholders are excited about what will transpire in the coming months, and what further amendments may be order before the reform is complete.

To assist our condominium community in engaging in this dialogue and debate, we are including, in this edition, a summary of some of the key proposed revisions, prepared by James Davidson. I look forward to hearing the various thoughts and comments of our members with respect to what's coming down the pipe!

In addition to all of the "reform excitement", CCI Ottawa has had another busy Spring. The recent Director's Course was, once again, sold out. In addition, the ACMO/CCI Tradeshow and Conference, held on May 29th, 2015, was a resounding success.

Having recently attended the National CCI Forum, I now fully appreciate the tremendous energy of the Eastern Ontario condominium community. While other chapters across the Country may sometimes struggle with attendance and participation at educational seminars and events, our Chapter is fortunate to have a vibrant, interested and motivated condominium community. The success of our Chapter is due entirely to the participation of our members, and I want to take this opportunity to thank all of our members and partners for the time and energy which you devote to CCI.

Now that the "lazy days of summer" are here, be sure to take the time to renew your energy, but don't forget to save your dates in September with the "Meet the Expert Panel" in Ottawa on September 16th at the Hellenic Centre and the second annual Kingston CCI/ACMO Tradeshow and Conference and first mini directors course (September 11/12).

Wishing you a safe, healthy and happy Summer!

Nancy Houle  
President-CCI-Ottawa



**Rod Escayola**



**Tim Kennedy**

After years in the making, the province of Ontario finally released its much anticipated proposed amendments to the Condominium Act. This was done on May 27, 2015, when Bill 106 was introduced at Queen's Park. If made into law, this Bill will introduce sweeping changes to the governance and management of condominiums in Ontario. As such, you will not be surprised that we have devoted a significant portion of this edition of our quarterly magazine to this topic. Rod Escayola will present an exhaustive summary of some of the most important proposed changes and Jim Davidson offers a very useful chart comparing the current Act with the proposed changes.

But while Queens Park is busy working on tomorrow's condominium industry, we were busy putting together a great selection of articles dealing with more immediate concerns. We have a very informative article presenting options on how to invest your Reserve Fund in these times of historically low returns. The Q&A corner also deals with a question on Reserve Funds.

In our engineering corner, we propose a significant piece on water damage and mould. Beware of what lurks behind your walls... And, as we have done in our last few editions, we propose a "case study", where some of our local corporations share their successes and lessons learned in important projects. In fact, in this edition, two corporations compare notes on how they tackled their window problems.

Finally, in our safety corner, TSSA presents great tips to have a safe BBQ season. As you can see, we are offering a well-rounded and very meaty edition!

We invite, once again, any comments or suggestions you may have and invite you to submit questions for our Q&A or stories for future publication. In particular, we want to hear your successful or challenging experiences. How have you tackled a problem or a project? Tell us about it.

Don't forget to follow us on LinkedIn (CCI Ottawa) and on Twitter (CClinOttawa).

Happy summer everyone!

*Tim Kennedy is V-P and General Counsel at MaxSys Staffing & Consulting.*

*Rod Escayola is a partner with the law firm Gowlings in Ottawa.*

### Contributing to CCI Condo Contact Editor's Contact Information

A benefit of CCI membership is the opportunity to share perspectives with one another by contributing and reading articles in CCI-Ottawa'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.

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#### ARTICLES MAY BE FORWARDED TO:

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# WINDOW PROBLEMS?

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# What To Do When Your Windows Reach the End of Their Useful Life?

## Refurbishing vs. Replacing windows: the pros and cons of both alternatives

*By Sean Cornish, Apollo Property Management*

Changing the windows in a high-rise at the end of their useful life is a daunting project for any corporation. It can also be the single most expensive project for the corporation (possibly second only to re-cladding the building). Thankfully, there is more than one option. For instance, corporations can choose between changing or refurbishing their existing windows. Two very different projects, at very different costs, presenting different benefits and challenges.

Take for instance two sister-corporations in the downtown core who both decided to address their failing windows in two very different ways. Both towers were built in the mid-seventies by the same builder. One has 27 residential floors and the other, 25. These two towers are two separate corporations, managed by separate boards with different priorities. One of the towers went with a full-blown **replacement**, the other with the **refurbishing** of the existing windows.

The window replacement project for Tower A was started before I took over management of the corporation. The Board presented the owners with options for addressing the windows and the owners approved new windows to replace the original ones. The owners contributed additional funds to the reserve fund over a number of years through additional condominium fees and eventually through a special levy. The

decision was made to install the new windows over the existing frames to minimize the construction needed.

The window replacement was more expensive and more intrusive for the owners and residents. At the same time, with this project the owners were able to get the look of new windows as well as the benefit of improved performance as the new windows included a thermal pane with solar coating and argon gas. At the end of the day, the owners have more weather-tight windows, frost free glass and a nice finished look.

In Tower B, the owners chose to re-furbish the existing windows to extend the life of the original windows. This decision was partly based on cost. Many owners felt that no work was required on the windows and that it was too expensive and unnecessary to replace them. By refurbishing, they maintained the existing windows and frames so there was no outward sign of change once the project was complete. What they achieved was improved efficiency of the existing window system at a lower cost and with far less disruption to the residents.

The window replacement required approximately two to three days for the replacement itself with additional visits for follow up inspections and addressing deficiencies. The owners' units were exposed to the outside when the windows were removed and

replaced. On the other hand, the refurbishment only required a half or a full day of work and none of the exterior windows were removed so there was little to no exposure to the outside. It was much less intrusive.

Both cases began with the involvement of engineers. The boards engaged an engineer to evaluate the existing windows systems and to present options for addressing the existing challenges. At Tower A, the engineer that completed the evaluation was also responsible for the project, from design and specifications to monitoring the work, reviewing for deficiencies and ensuring all of the work was completed to the required standard. Prior to going to tender, the Board had sample windows installed in two units to evaluate the options. Through the tender process, the Board selected **Bassi Construction with Manray Glass and Aluminum**.

The same engineer completed the evaluation at Tower B. Once the decision was made to proceed with refurbishment, the engineer was no longer involved – resulting in further savings. The Board of Directors looked for a company that was able to do the window refurbishment within the expected budget. The board investigated a number of companies in Ontario and in Québec. Before they even took the decision to refurbish the windows, they conducted a test installation in some units to

evaluate the options. **Le Groupe Fenestra** came in with the best price and the best proposal to complete the work required.

### The management of the project

The Tower A project involved gaining access to 231 residential units on multiple occasions:

- to measure the windows
- pre-inspect to ensure the units were prepared before the scheduled day of work
- completing the actual work over two to three days
- follow up inspection by the engineer and property manager
- follow up visit to address deficiencies

In the Tower A project we ran into supply delays from the manufacturer which significantly disrupted the work schedule and planning. While we began the project with a predictable schedule, this changed once the manufacturing issues arose as we were forced to adjust the schedule week to week. This was the single most disruptive aspect of the project and required a lot of additional work from the engineer, contractor and management team and was a significant imposition on the owners and residents, stretching their patience and goodwill.

For Tower B, we were completing the work in 227 units and the work was significantly less intrusive. It was still important that the owners and residents understood the work that would be done and it was important to secure their cooperation to prepare their unit accordingly. In both cases, access to the windows was required, which meant moving furniture, dealing with window coverings, etc.

Le Groupe Fenestra had a lot of experience with these types of projects and provided us with guidelines for the residents on what was required to prepare the units. Once the project began we were able to establish a fairly predictable schedule which allowed us to look ahead a number of weeks and advise owners so they had ample time to prepare. Fenestra was accommodating and worked

very well with the superintendent and with the residents and owners.

We were lucky to have superintendents in each building who worked very well with the contractors in terms of providing access to units when required. In some cases we were forced to rely on the superintendents to prepare units where the owners or residents had not prepared them in time.

### Keeping owners informed is key

There are many factors that impact the success of any project, but one of the key factors is ensuring that everybody has a good understanding of the scope of the project, the likely impacts on the owners or resident and the intended result. You need to temper expectations and ensure that there is enough information for owners and residents to understand what is going to happen.

For example, in the case of the window **re-placement** project, the actual in-suite work ended up being more intrusive than originally intended and we were not able to adequately prepare the owners for the added inconvenience. For the **refurbishment** project, the work was intended to deal specifically with the air leakage through the windows, and to improve the mechanical movement of the windows. It was important to temper any expectation of owners and residents of possible improvements. Tower B was not getting shiny new windows. The owners needed to be informed of what to expect at the end of the project so they understood the limitations of the work.

In this case, you have two very similar towers with two very different projects. One is

more costly than the others so the expectations are different. In both cases the majority of the owners were satisfied with the work, and conditions were improved. The improvements for Tower A with new windows were more significant in terms of the improved look, performance and in particular the old issues of frost on the glass of the upper north side of the building is no longer an issue. At Tower B, some owners may continue to see the presence of frost on some glass but this particular issue was not meant to be addressed by this project.

In terms of both projects, I would not choose one option over the other. Both had positive results and both have something to recommend them. The choice of projects depends on the budget priorities of the Corporations, on the tolerance for disruption and inconvenience and on the specific issues that need to be addressed.

In the end, both projects were successful in my eyes. As a property manager, the refurbishment project was a less complicated and disruptive project and easier to manage. As property managers advising boards on how to proceed, it is crucial that you understand what options are available, the related costs, expected results and limitations.

*Sean Cornish is a Senior Property Manager and the General Operations Manager for Apollo Property Management in Ottawa. Prior to landing in Ottawa in 2012, Sean was a property manager, Regional Director and Vice-President of a management company on the west coast for ten years. He focuses on luxury high-rise residential condominiums. ■*

### 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 me and I will assist you in writing your article.

By sharing your experiences we learn from the past and improve our collective future.

Rod Escayola, co-editor  
rod.escayola@gowlings.com



# TSSA's Safety For Your BBQ Sizzles

**F**ew things can match the fun and enjoyment of a barbecue with family and friends. Practice sensible, safe barbecuing and your spring/summer get-togethers will be a sizzling success.

## Season Opener

At the start of the BBQ season, do this three-step safety check of your BBQ:

1. **Clean:** Use a pipe cleaner or wire to ensure burner ports are free of rust, dirt, spider webs or other debris.
2. **Check:** Examine the hose leading from the tank to the burners. Replace if cracked or damaged.
3. **Test:** Find leaks by applying a 50/50 solution of water and dish soap to propane cylinder connections and hoses. If bubbles appear, tighten the connection and/or replace the damaged parts and retest.

## Light It Right

Take these steps in the right order when igniting a BBQ:

1. Open the hood.
2. Turn gas release valve on tank.
3. Turn on grill controls or heat settings.
4. Take a step back.
5. Push the igniter button. If there is no igniter button, insert a long match or BBQ lighter through the side burner hole first, then turn on the heat control knob. If the burner does not ignite right away, turn the gas off and wait five minutes, keeping the hood open, before repeating the procedure.



## Keep It Safe

Barbecues are approved for outdoor use only. They emit carbon monoxide, a poisonous gas that can lead to unconsciousness and even death, which means never barbecue in a garage, tent or other enclosed space. Propane cylinders must not be used or stored inside any structure.

## Do's and Don'ts for Handling a BBQ

### DO...

Keep loose clothing away from a hot barbecue.

- Keep children and pets at a safe distance.
- Turn gas valve off first when finished, then turn off the burner controls, so no gas is left in the connecting hose.
- Allow the BBQ to cool completely before closing the cover.

### DO NOT...

- Don't leave the BBQ unattended when in use.
- Don't allow grease to build up on the burners or at the base of the barbecue, as this could cause a grease fire
- Don't throw water on a grease fire – this will only spread the flame.

- Don't position your barbecue too close to wooden fences or walls. Make sure the area behind your BBQ is free of combustible material, since this is where hot gases escape.

## BBQ on the Balcony: Yes or No

### NO, IF...

- Prohibited by the governing documents of your building
- Prohibited by the building owner or property manager of a rental property
- If prohibited by the City where you are located

### YES, BUT ONLY IF...

- The balcony is open (no enclosures or walls have been erected)
- A propane cylinder is transported in a service elevator. When there are no service elevators, you may use the passenger elevator, but you must be alone.
- The cylinder is kept on the balcony and connected to the BBQ.
- The BBQ is kept clear of combustible material as listed on the BBQ's rating plate or in the certified instructions.
- The propane cylinder relief valve is at least one metre horizontally from any building opening below it, and three metres from a building air intake.

These seasonal safety reminders are reproduced with TSSA's approval. The Technical Standards & Safety Authority is a not-for-profit, self-funded organization dedicated to enhancing public safety. It delivers public safety services on behalf of the government of Ontario in the sectors of boilers and pressure vessels, elevating and amusement devices, fuels and upholstered and stuffed articles. You can find more safety tips on [www.safetyinfo.ca](http://www.safetyinfo.ca) ■



# Condominium's Role in Managing Water Damage and Mould

*By Matthew Laneville and Shawn Doherty  
exp Services Inc.*

**I**t is the responsibility of the condominium corporation and its associated board members to maintain the upkeep and manage the life expectancy of its condominium complex. Maintaining the life expectancy of the building evidently consists of repairing building materials/failures when needed but can also include preventative measures to minimize future damages. Within this article, the focus will be on the damages that cause mould which can then subsequently lead to poor air quality within the building.

On-going building maintenance and understanding the causes of mould is a key in preventing moisture/water intrusion and even significant water damage to a building. Therefore, the maintenance and repairs of the following, building components but not limited to are a must for preventing water intrusion: the roof membrane or shingles, eaves trough, sealants around flashings and windows/doors, siding systems, exterior grading.

In addition to the commonly understood water leaks, water damage can also occur via condensation. Condensation is formed when humid air comes in contact with a cold surface. As such, exterior building components with poor insulation, gaps in insulation and cantilevered building components can result in colder surfaces and, over time, the creation of condensation.

The potential for water leaks or damage or condensation in a building can be a significant concern depending on the materials the water comes in contact with. When water comes in contact with the right materials, there is the potential for the creation of mould and the start of air quality concerns in the building.

## **What is mould and why is it a problem?**

Moulds are microscopic fungi that are commonly found in outdoor air and often indoors, albeit typically in lesser quantities. Mould spores require the following three parameters to be present in order for growth to occur:

- 1) moisture (water intrusion / condensation),
- 2) food source (often cellulose which is present within organic materials such as drywall paper and wood); and
- 3) and a specific temperature range (varies from species to species).

Problems can arise when cellulose based building materials (the paper associated with drywall, wood, some ceiling tiles, carpeting, etc.) get wet as they become a perfect growth medium for various mould species. Moulds do not typically grow on non-cellulose based materials (concrete, tile, plaster, etc.). However, if these materials are covered with dust / dirt, which in all likelihood contains cellulose based material, they may offer a suitable growth medium.

Exposure to mould can become health concern, especially in individuals that fall within the definition of the vulnerable population (individuals with suppressed immune systems, children, the elderly, asthmatic individuals, individuals with weakened respiratory systems, etc.). Symptoms of exposure to moulds may include but are not limited to nasal congestion, difficulty breathing (wheezing), skin irritation/rashes, allergic reactions, and in some individuals mould infections may develop within the lungs. Additionally, some species of mould are known to produce mycotoxins which are a toxic byproduct of fungal metabolism causing disease or in some cases even death.

Understanding that health related effects from mould stem from breathing in the mould spores, air quality concerns from mould are higher when the mould spores on a surface are dry and become air born through contact or air currents. As such, the visual presence of mould is not always reflective of elevated mould in the air or poor air quality. The key is to address the presence of water damage and/or mould immediately to minimize the damage to more materials and impacts to the air quality.

## **What to do if a wetting event occurs?**

Wetting events are defined as an event where building materials are exposed to water/moisture and may occur for a variety

of reasons including roof leaks, broken pipes, and poor seals around tubs, windows, or even occupant activities within a building. Additionally wetting events may occur by less obvious means, for instance indoor relative humidity above 60% can create condensation on cool surfaces which may promote mould growth.

The first task that should be undertaken during a wetting event is to attempt to stop the source of the water infiltration, if feasible. It may not be easy to stop the water source due to limiting factors such as weather, the inability to isolate mechanical/piping systems and detection of the source may be difficult as water will often flow along the path of least resistance meaning that water damage may exhibit itself some distance away from the area of entry. Once an investigation of the water source is underway, it is recommended that an attempt be made to dry the building materials as soon as feasible since microbiological contamination may occur in as little as three (3) days following the wetting event, if conditions are suitable for mould growth.

In cases where the materials cannot be dried, it is recommended that the water damaged materials be removed prior to the occurrence of mould growth. If the removals cannot be done in-house, emergency or restoration contractors are well equipped to remove water damaged materials in a safe manner and identify mould / indicators of mould during the removal program. When removal of building materials are required, the age of the building must be taken into consideration and project specific testing for asbestos within the building materials may also be required. The building owner and/or restoration contractor can consult within an environmental professional to collect any suspect asbestos-containing materials and submit samples for rush analysis, as timing is of the essence to minimize the potential for mould growth.

### **What to do if suspect mould contamination is observed?**

Often, mould may not be visible as it may be concealed behind a wall or building ma-

terials. A mould investigation may be performed if it is uncertain that mould is present in a building. Such an investigation may consist of: 1) collecting moisture readings of building materials (to assess whether moisture levels within a wall/ceiling/insulation are conducive to mould growth); and/or, 2) collect tape samples of surfaces suspected of containing mould; and/or, 3) the collection of air samples to assess the concentrations of mould spores in the air within the area of concern versus the outside or known clean areas. An environmental/mould professional can interpret the results and assess whether mould levels within a building are a concern.

### **Mould Removal**

If mould contamination is observed / confirmed, the source of the visible mould should be investigated (ie. water infiltration, condensation etc.) and stopped prior to or during the mould removal stage and subsequent repairs to prevent future mould growth.

In Canada, the removal of mould contaminated materials is not regulated, but there are industry standards and guidelines including *"Mould Guidelines for the Canadian Construction Industry – Canadian Construction Association"* and *"Mould Abatement Guidelines – Environmental Abatement Council of Ontario (EACO)"* that have provide guidance on removing mould contamination in a safe manner. Typically, mould removal/abatement falls under one of three categories:

- 1) small scale (>1m<sup>2</sup> of mould growth);
- 2) medium scale (1-10m<sup>2</sup> of mould growth); or
- 3) large scale (>10m<sup>2</sup> of mould growth).

These levels of abatement are set in place to ensure that proper procedures are followed during the abatement process to prevent mould spores from becoming readily airborne and affecting areas outside of the mould removal area. Additionally, these procedures are also designed to protect the workers removing the mould contaminated materials by stipulating the type of personal protective equipment (PPE) while perform-

ing the work. It is recommended that mould abatement be performed by an experienced abatement contractor as they have the specialized equipment required to ensure mould spores do not exit the work area.

Often mould sampling is performed upon completion of a mould abatement to ensure that mould growth has been removed, meaning the indoor mould spores are similar in quantity and variety when compared to the outdoor air.

### **How to Prevent Mould Growth**

A series of simple practices may be utilized in order to prevent water damage incidents and subsequent mould growth. These practices range from:

- Inspecting of all seals and roofing membranes (on a regular basis) in order to identify any potential areas where water may be infiltrating or areas that may be prone to water infiltration.
- Isolating water services that may be exposed to low temperatures (i.e. exterior hose bibs) as frozen pipes are common and account for many wetting events.
- Monitoring the humidity of common spaces as a simple and effective way to prevent mould growth by limiting the occurrence of condensation.
- Upgrading / improving the insulation in the building envelope and/or attic for garden homes to minimize cold surfaces which are prone to condensation.
- Replacing / repaired windows that have lost their seal and commonly showing condensation.
- Educating tenants of various practices, including: the utilization of a bathroom fan when times of high humidity occur (bathing/shower); maintain reasonable temperature in the units; allow air flow between furniture and exterior walls; report all water leaks in a timely manner in order to prevent mould growth.

Mould is a commonly identified in indoor environments, but when proper procedures/practices are put in place, the poten-



tial for contamination is reduced. By being proactive and ensuring that sources of water intrusion / condensation are repaired and maintained, the potential for mould incidents and subsequent poor air quality is greatly reduced.

*Matthew Laneville is an Environmental Scientist with 8 years experience in the environmental consulting industry. His work experience includes: conducting large-scale, complex Hazardous Materials Building Surveys, indoor air quality investigations, HAZMAT abatements/mitigation (asbestos, mould, and lead), potable water testing, and industrial hygiene sampling.*

*Shawn Doherty, P.Eng. is an environmental engineer with over 14 years experience. He is currently the group leader of the Hazardous Materials Group within the Earth and Environment Division within the Ottawa office of Exp Services Inc. Mr. Doherty has acted as the project manager for several Designated Substance Surveys and asbestos abatement programs for several hospitals, schools and condominiums in the area. ■*

## Ask the Pros

# Ask the Pros



**Q:** What eligible investments can a condominium corporation invest in?

**A:** Section 115 of the Act defines the eligible securities a condominium corporation can invest its operating and reserve funds in as a bond, debenture, guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or similar instrument that is:

1. Issued or guaranteed by the Government of Canada or any province of Canada
2. Insured by the Canada Deposit Insurance Corporation

3. Are securities of a prescribed class (currently there are no securities of a prescribed class).

It's important to note that bankers' acceptances and money market mutual funds are not considered eligible investments. In addition, the condominium corporation's operating (or general fund) investments must be cashable within 90 days of request.

*Question answered by April Wheeler, a Senior Manager at McCay Duff*

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# An Overview of the Proposed Changes to The Condo Act

By Rod Escayola

After years in the making, the province of Ontario finally released its much anticipated proposed amendments to the *Condominium Act*. This was done on May 27, 2015, when Bill 106 was introduced at Queen's Park. This Bill, which is not law yet, is formally titled "*An Act to amend the Condominium Act, 1998, to enact the Condominium Management Services Act, 2015 and to amend other acts with respect to condominiums*".

As indicated in its long title, this Bill, if passed, will serve to amend our 15 year old *Condominium Act* as well as other legislation pertaining to condominiums in Ontario. For instance, Bill 106 would amend certain portions of the *Ontario Building Code* and of the *Ontario New Home Warranties Plan Act*. Most importantly, this Bill would also result in the adoption of a new piece of legislation which would regulate condominium management.

Bill 106 is a lengthy piece of legislation of approximately 160 pages. It introduces sweeping changes to the governance and management of condominiums in Ontario. As such, it is difficult to 'summarize' it. For this reason, we propose focusing on some of its highlights, which we believe may be of interest to our readership. It is important to keep in mind that this article is based on the proposed changes, as they currently stand. The final version of the Bill may differ from what has been introduced last month.

## A New Condominium Authority and Tribunal

If Bill 106 is adopted in its present form,

the province would create a not-for-profit and self-financed Condominium Authority. The exact mandate and functions of this Authority have yet to be developed through the adoption of regulation, but already, we can expect that this Authority would:

- Provide information and resources to condominium owners and corporations;
- Oversee mandatory training for all condominium directors;
- Oversee the administration of a new Condominium Tribunal (more on this below).

Bill 106 would also see to the creation of a Condominium Authority Tribunal. This Tribunal would have jurisdiction to adjudicate many of the disputes between corporations, owners, occupiers and mortgagees. The precise mandate and authority of the Tribunal have yet to be fleshed out in regulation to be adopted by the province. Still, we know already that the Tribunal would have the following powers:

- The power to refer disputes to an alternative dispute resolution process (such as mediation, for instance);
- The power to order compliance with the *Condominium Act* or the corporation's governing documents;
- The power to order a party to pay damages as a result of an act of non-compliance, but only up to \$25,000. In passing we note that \$25,000 is presently the upper limit of the jurisdiction of Small Claims Court;
- The power to order a party to pay legal costs;

- The power to impose a penalty of up to \$5,000 to a corporation who has refused without valid reason to allow a person to examine corporate records. The exact amount of the penalty is expected to be set by regulation. Presently, this penalty is limited to \$500 only;
- Tremendous power to direct whatever other reliefs the Tribunal considers fair in the circumstances;
- If the Tribunal orders an owner to make a payment to the corporation, this payment could be added to this owner's common expenses. Similarly, if the Tribunal orders the corporation to make a payment to the owner, the owner would be able to set this payment off against his common expenses – meaning that the owner could deduct from his condo fees whatever the corporation owes him or her. It is to be noted that the proposed Act would provide owners with the power to claim back from corporations actual costs when they are awarded costs or damages in a compliance matter, which is similar to the power corporations presently have against owners when they obtain compliance.

It is interesting to note this new Condominium Authority and new Tribunal are required to be self-financed. Some of the financing is expected to be generated by the users who would be required to pay certain fees. The details of how these new entities would be financed have yet to be hashed out through regulation. The Condominium Authority is also expected to be able to levy fees from all condominium

owners. A number that seems to be floating around is the suggestion that condominium owners would pay \$1 per unit, per month to finance this Authority. Assuming that there are 700,000 condominium units in Ontario, this would generate approximately \$8.4 Million dollars. Just as a point of comparison, the budget for the Landlord and Tenant Board exceeds \$30 Million dollars... We may have a far way to go.

### **Corporations' Reporting Obligations**

Under the amended Act, Corporations would be required to file annual returns with the Condominium Registrar. The exact content of what would be required to be included in these reports has yet to be fixed by regulation. Presumably, this report could (and likely would) include information about the corporation, such as its address of service, the number of units and other similar relevant information. We also know already that corporations would have to report any changes to the composition of the board of directors, whether as a result of election, removal, resignation or vacancy. The records would be accessible to the public.

While this kind of reporting would be new to the condominium industry, similar reporting obligations already exist for for-profit corporations at the provincial and federal level.

### **Director's Qualifications and Disclosure Obligations**

The basic qualifications required to be a condominium director do not appear to have changed. Condo directors would still be required to be individuals (as opposed to corporations), be at least eighteen years of age, be capable within the meaning of the *Substitute Decisions Act* and not be an undischarged bankrupt.

However Bill 106 proposes to impose mandatory training on all condominium directors. It is not clear at this stage what training would be required, who would provide such training and how frequently such training would have to take place. It is not clear either whether individuals who have already attended CCI's directors'

course would be exempt from this requirement.

Finally, directors would be required to proceed with a certain level of disclosure. We will have to wait for the adoption of regulations to know exactly what directors will be required to disclose. We know already that directors would need to disclose their address to the corporation. As for any other disclosure obligations, we can speculate that directors may be required to disclose any conflict of interests, whether they are engaged in litigation with the corporation and perhaps even whether they have a criminal record. At this stage, however, this is pure speculation. We will have to wait and see.

While additional training and transparency is a good thing, one must wonder if such additional requirements may dissuade certain individuals from serving on condominium boards. This would be unfortunate considering how difficult it already is to convince owners to get involved.

### **Budgetary disclosure**

It is interesting to note that Bill 106 proposes to add an entire section on corporations' budgets.

If the amendments are passed, corporations' budgets would continue to be adopted by boards and not be subject to a vote by the owners. However, boards would have to adopt their budget at least 30 days before the end of the corporation's fiscal year and would have to circulate it to the owners within 15 days of its adoption. More importantly, boards would not be allowed to implement their budget until it has been circulated to owners. In the event the board was to amend the budget, it would also have to provide notice of such amendments to owners.

It is interesting to note that corporations would not be allowed to go over budget on certain expenses (which have yet to be identified by regulation) unless notice is provided to owners. It is also interesting to note that Bill 106 proposes to require specific procurement processes when the corporation contemplates entering in certain

contracts or arrangements. The kind of contracts requiring a more stringent procurement process and the kind of process to be followed has yet to be defined by regulation.

### **Reserve funds**

Bill 106 proposes various amendments pertaining to reserve funds. Unfortunately, we will have to wait for the adoption of regulation to fully understand what changes, if any, are being made to reserve funds. We see already that regulation may define what additional purposes the reserve fund can be used for and to see what could constitute "major repairs" for which the reserve fund can also be used.

Also, the concept of what is "adequate" funding to the reserve fund could be further defined by regulation. Presently, the current Act provides that the contributions to the reserve fund have to be adequate to provide for the expected costs of major repairs and replacement of common elements. We can expect further clarifications as to what would constitute adequate funding.

Bill 106 also introduces the concept of a "Reserve Fund Study Providers". It is unclear as to who exactly such a person would be and what would be his/her qualifications as these will be set by regulations. For the time being, the only clue we have is that such a person would be required to meet the prescribed requirement for the purpose of conducting a reserve fund study. Presently, the reserve fund study must be provided by an accredited or certified appraiser, architect, engineer, certified reserve planner, quantity surveyors, amongst other, all of whom must not have any affiliation with the board or with the corporation.

The proposed amendments would add the Reserve Fund Study Providers to the list of professionals on which directors can reasonably rely to benefit from the statutory protection found at section 37 of the *Condominium Act*.

### **AGMs**

Bill 106 would make it mandatory for corporations to provide owners with an ad-



vance notice, 35 days before the AGMs. This advance notice would be followed by the regular 15-days notice.

Presently, a corporation does not have to give an advance notice of its AGM. All it has to do is give its owners a 15-day notice before the AGM. Without an advance notice, some owners felt that they are not given an opportunity to put their name forward for election in time to have their name included in the AGM package and on the proxies. In order to allow owners a fair chance to put their name forward for election before the AGM package goes out, many corporations already got into the habit of providing owners with advanced notices. Bill 106 will make this process mandatory.

Bill 106 also proposes important changes to the level of quorum required at AGMs. The standard quorum required for an AGM to proceed will be fixed at 25% of the owners. However, in the event quorum has not been reached on the first two attempts, quorum would then be reduced to 15% on the third and on any subsequent attempts to hold the AGM. While this quorum seems low, keep in mind that, under the present legislation, 15% of the owners are already sufficient to requisition a meeting of the owners. This reduced quorum would allow for corporations to hold their AGM even though they are unable to achieve a 25% quorum.

Bill 106 would also allow for electronic or telephonic voting at owners meeting. Such voting could be made with the assistance of technological means such as telephone calls, emails, faxes, automated touch-tone systems or computer systems.

The introduction of this kind of technology will also facilitate the holding of board meetings, allowing them to proceed by way of teleconferences (even without a by-law as is required presently) provided that all directors consent.

### Special Owners Meetings

As it presently stands, owners can requisition an owners' meeting provided that they

get 15% of the owners to sign a requisition in support of such a request. If the corporation receives such a requisition, it must call and hold a meeting within 35 days (or, if the requisitionists consent, the meeting can be held at the next AGM). Presently, boards do not have to acknowledge receipt of a requisition. All that boards have to do is send a notice of the meeting 15 days before the meeting. This often means that the requisitionists hear nothing for the 20 days following the communication of their requisition. They are left to guess whether the corporation will call a meeting or not and, if so, when. This is often the source of stress and frustration.

There are significant changes to this process under Bill 106.

Under the proposed legislation, the board would have up to 50 days to call and hold a requisitioned meeting (up from 35 days). It may appear odd, at first glance, that the proposed legislation provides for such an extension of the time to call a requisitioned meeting. This is because Bill 106 introduces numerous interim steps between the communication of the requisition and the calling of the meeting. These steps are aimed at improving communication between the requisitionists and the board and at streamlining the process.

Under the proposed changes, the corporation would have 10 days to respond to the requisitionists. In this response, the corporation would have to advise whether it intends on calling the requisitioned meeting or not. If the corporation does not intend on calling the meeting, it would have to advise of the reasons for this refusal. Requisitionists would then have 10 days to correct their requisition and submit it again to the corporation or they would have 20 days to bring the corporation's refusal to hold the meeting to the Condominium Tribunal (or to the Court of Justice if the Condominium Tribunal has not been set up yet). If the requisitionists do not modify their requisition or do not bring the matter to adjudication, they would be deemed to have withdrawn their requisition and the board would not have to call the owners' meeting.

It is interesting to note that requisitionists would also be able to withdraw their requisition, although the conditions and timing of such withdrawal are not entirely clear as of yet. For instance, could the requisitionists withdraw their requisition after the notice of meeting has been sent to the other owners?

### Corporate records

The proposed modifications clarify and provide a more complete list of what constitutes a record of the corporation. It also allows corporations to keep their records on paper or electronically. Finally, it would indicate the length of time during which corporations must retain records, although the details of this have yet to be clarified through the adoption of regulation. What we know for now is that financial records would have to be kept for at least six year following the end of the fiscal year.

Proxies would no longer be treated differently from other corporate records. Presently, under the current Act, proxies (but not voting ballots) must be kept for a period of 90 days. Under the new act, both the proxies and the voting ballots would form part of the corporate records. We will have to wait for regulation before knowing how long they have to be kept for.

The process by which an owner can access and get copies of corporate records appears to also be slightly simplified. An overly technical approach under the current Act appeared to impose on owners the obligation to first *inspect* the documents prior to requesting a copy of same. It is interesting to note that the penalty for a corporation who refuses to grant access to its records without a reasonable excuse may jump from \$500 to (up to) \$5,000. The fees a corporation could charge an owner to examine or obtain copies of the corporation's record would also likely be set by the province – and potentially not by the corporation anymore.

The exceptions to an owner's right to access records remain similar to those present under the current legislation. Under the current Act, an owner cannot access records

relating to employee of the corporation, records pertaining to actual or pending litigation or insurance investigation or record relating to other owners.

### Repair and maintenance obligations

One of the most important proposed changes to the legislation, in my view, is that the responsibility to repair a unit after damage will no longer fall to the corporation (unless the declaration provides otherwise). The responsibility and the cost of repairing units after damage would be shifted back onto each owner.

In my view, this is a welcomed change, which will simplify greatly many matters including issues surrounding insurance. Unfortunately, the proposed Act does not appear to make this change retroactive. This may be a problem as many corporations have had their declaration drafted under the current (or prior) legislation. For this reason, many of the existing declarations impose on corporations the obligation to repair a unit after damage.

At the time of incorporation, this language was simply reflecting the legislation in place. By not making the proposed change retroactive, many existing corporation may still be responsible to repair units after damage simply because their “old” declaration says so. Corporations may not be able to benefit from this proposed change to the legislation as amending declarations is a very difficult and costly undertaking. It would have been preferable, in my view, to force all corporations into this new regime unless corporations chose to opt out of it *after* the passing of the new Act.

Another potential disappointment, at least for me, has to do with how Bill 106 addresses the problems associated with corporations making changes to common elements. Indeed, there has been much frustration and litigation over dispute pertaining to corporation’s extensive maintenance and repairs of common elements. Moreover, the definition of what constitutes a “substantial change” to common element remains unchanged and remains defined on the basis of cost alone. This, in

my view, does not sufficiently protect owners from changes unilaterally imposed by corporations under the guise that they are strictly proceeding with required “maintenance or repairs”. There are many examples of disputes resulting from corporations making significant changes to the look and feel of common elements when changing decks, refurbishing elevators or working on the landscape. When does “require maintenance” amount to a significant change? The proposed Act does not appear to have addressed this.

Below is a quick and basic summary of the level of consultation which would be required under Bill 106 by corporations facing work on common elements:

- Any “required repair or maintenance” using material which is reasonably close in quality (not look and feel) as the original as is appropriate in accordance with current construction standards would not require any form of consultation of the owners. This has not changed from the current Act;
- Any work required to ensure the safety or security of persons or to prevent imminent damage to property or assets would not require any consultation either. This too has not changed;
- Any work which is estimated to costs less than \$30,000 or 3% of the annual budgeted common expenses would not require consultation, *provided that owners, on an objective basis, would not regard the modification as causing a material reduction or elimination of their use or enjoyment of the element being work on.*

Bill 106 therefore proposes to raise significantly the financial threshold at which notice is required to be given to owners. It currently stands at \$1,000 and 1% of the budget. More importantly, notice will have to be given to owners if the proposed work may be perceived as materially impacting the owners’ enjoyment of the common elements. This is a welcomed change. Still, when notice is given to owners, it will be up to the owners to call an owner’s meeting. When/if such a meeting is called, sup-

port of 50% of the owners would be sufficient for the changes to take place unless the proposed change constitutes a substantial change;

- Any changes to common elements costing more than 10% of the annual budget will continue to constitute a substantial change, requiring the approval of 2/3 of the owners. This remains unchanged from the current version of the Act. In my view, the concept of what constitute a substantial change cannot be limited to a budgetary consideration. The concept of continued enjoyment of the existing facilities should have somehow been imported as a consideration in the determination of what constitutes a substantial change.

### Proposed changes to the management of condominiums

Finally, Bill 106 proposes the adoption of a brand new piece of legislation: the *Condominium Services Act, 2015*.

The Act would also provide for the creation of a not-for-profit Administrative Authority overseeing property managers and implementing a complaints mechanism. The new Act could also see the setting up of a disciplinary committee to investigate and respond to complaints made against/about managers. The Authority would have tremendous investigatory powers and would be able to fine property managers. In cases involving protection of the clients, the regulatory entity could freeze assets of managers, former managers and (thank goodness) manager-wanna-bes.

This authority could also adopt a code of ethic applicable to all managers.

Unfortunately, it appears that the proposed Condominium Authority Tribunal has not been granted jurisdiction to rule over dispute between corporations and property managers. If the province is planning on creating such a specialized tribunal, it may have made sense to also grant it authority to rule over these kinds of disputes.

*Continued on page 17*

# National News

Summer 2015



## Message from the President

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

As I am just returning from the Windsor Leader's Forum, I am feeling exhausted yet refreshed, accomplished yet insignificant, and enlightened yet confused. There was so much good information flowing every second that no one person could possibly have absorbed all the wisdom, the leadership and the support that flowed-freely from member to member! The forum started with a few formal, interactive sessions wherein some of our thought leaders shared their successes and challenges in running their Chapter activities.

Andrew Fulcher, from South Alberta Chapter, shared some pearls of wisdom about how their chapter revitalized their seminar program by bringing in speakers from across the various other chapters to "freshen-up" their events. This change in perspective led to increased attendance at their Lunch and Learn seminars, and attracted new participants that had not been involved in the past. Speakers like Murray Johnson from Toronto and Area Chapter, and Jim Davidson of the Ottawa Chapter gave their time to help his Chapter achieve new successes in their seminars.

Doug Shanks, from Northwestern Ontario Chapter, reiterated the thoughts of Andrew and demonstrated the added benefit of the National support by helping to get two guest speakers to Thunder Bay for their members later in the day during his presentation. Armand Conant, from Toronto & Area

Chapter, and Jim Davidson both travelled there and presented on various legal matters which helped the Chapter reach a new and renewed audience. Doug described the process as having relieved the Chapter members of "speaker fatigue", while adding a higher public profile to the local chapter and so much so that the local media covered the events.

Theresa Girardin, the Membership Chair of their London & Area Chapter, shared the challenges of a retaining membership. Some of the jewels of wisdom that she was able to share included personally calling members who had not renewed their membership during the previous membership cycle. Many of those members were eager to rejoin as they did not intentionally let their membership lapse, but may have changed Management or had other challenges that simply did not let them renew. She also suggested that Property Managers might be willing to distribute the membership forms to their clients, or even put them into new sale packages.

Paul Saum, Membership Chair from South Saskatchewan Chapter, wowed the crowd with the vast effort that he had put in to personally deliver membership forms to hundreds of condominiums within his area, and track their returns. This grass roots, hands on, personal sales approach gave their chapter the largest percentage growth of all chapters this year. Paul was honest enough to admit though that he was part of "Geezers' Incorporated" and that he and Gerry Cairns, both being retired, had found a new purpose which helped them avoid the "morning mall walks" and the "afternoon couch surfing competitions"! His humorous presentation clearly drove home his message that there are plenty of volunteers who would love to help, if you just ask!

Later on Thursday, some of our members reviewed how technology, websites and social media were no longer optional in the running of a successful Chapter. Sally Thompson shared the keys to a suc-

*continued...*

## GET INVOLVED!!

CCI chapters are always looking for dedicated and enthusiastic volunteers! Put your passion and expertise to use!

For more information, please contact your local chapter.

Contact information can be found at

<http://www.cci.ca/CONTACTUS/chapterlocations.asp>





## Message from the President Cont'd.

successful website, with a reminder to keep the target audience in mind. Marc Bhalla described why making information accessible on your public website, and through various social media forums would actually increase CCI's profile and help drive membership through recognition. Search engines that rate websites cannot rate private areas of a website, and as such, our potential members are not finding us because our knowledge is hidden away. Alison Nash reviewed the newly updated National Website and described what the improvements were, and how the CCI branding and search engine optimization had been highly prioritized during the update.

The last formal seminar had Bob St. Laurent and Tania Haluk talking about harnessing the power of sharing resources, materials and knowledge with the other local Chapters. Bob talked about how all

of the Atlantic provinces have ended up sharing their educational materials since their legislation is so similar, which enabled them to move forward with their seminars much more rapidly than they could have individually. Tania talked about the sharing done through the Ontario Caucus, which is a committee of members from all seven Ontario Chapters, and how that cooperation allowed more influence and sharing of ideas, materials and objectives for the benefit of all Chapters.

That night, the local Windsor Chapter thrilled us all with a guided tour of the Hiram Walker Museum, and a history lesson in a wonderful format called a "Rum-Runners Tour". We all got a new respect for the prohibition ingenuity and a great example of how to take advantage of the conditions of your time. There is opportunity everywhere if we just look for it!

I am sure that I speak for the nearly 90 attendees at this semi-annual Leaders Forum, when I say that we learned a lot about Windsor and its economy;

but mostly the gracious, friendly, generous manner in which the Chapter received us as though we were VIP guests in their city. Thank you goes out to Bill Norris and all of his wonderful Board for truly outdoing themselves in every single aspect of their hosting duties. I know I said that no one would ever host a better Leaders Forum than Winnipeg did last year, but I have been known to be corrected on occasion! Thank you to everyone who helped out, participated, and attended. So my last "Thank You" goes out to CCI National and all the people there who helped to make this happen! These sessions always breathe new life into me, and regenerate my batteries to continue volunteering for such a great organization, and I hope they do for you also.

Proud to be your President.



## CCI NATIONAL ANNUAL GENERAL MEETING

### PLEASE MARK YOUR CALENDARS FOR THE 2015 NATIONAL AGM AND AWARDS BANQUET

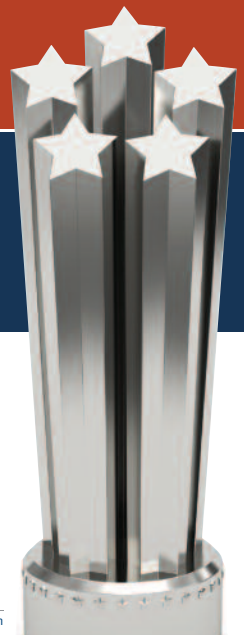
DATE: Thursday, October 22, 2015 | TIME: 5:30pm  
LOCATION: Chelsea Hotel, Toronto | 33 Gerrard St. W., Toronto

The AGM will take place in conjunction with the 2015 Fall CCI National Leaders' Forum, which is scheduled for October 22-23, 2015. Don't miss the updates of the activities of the National Executive Board, and of the national committees and chapters. The meeting will provide an opportunity for members to network with other members of CCI.

The National Awards Dinner will take place following the AGM, where CCI will present and honour recipients of the CCI 2015 national awards – the FCCI and DSAs, Chapter of the Year, and Newsletter of the Year.

Watch the CCI national website – [www.cci.ca](http://www.cci.ca) – for more information!

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## CALL FOR NOMINATIONS

CCI National is seeking members who have shown a dedication and commitment to the success of CCI and have the desire to take a national leadership role within the Canadian Condominium Institute. For information on eligibility, election process and nomination form, please visit the CCI-N website at: [www.cci.ca/CCINATIONAL/nationalnominations.asp](http://www.cci.ca/CCINATIONAL/nationalnominations.asp)

# Condo Cases Across Canada

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



*It is my pleasure to provide these brief summaries of recent condominium Court decisions across Canada. I don't provide summaries of every decision rendered. I select a handful of decisions that I hope readers will find interesting. I hope readers enjoy this regular column of the CCI Review.*

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

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

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

## THE HOT TOPIC – The definition of family and a finding of bad faith. The dilemma of the dissenting director.

**A recent case in Ontario, dealing with a condominium's struggles to establish a definition of "family", included a finding that one of the directors had acted in bad faith. The case deals with the responsibilities – and the dilemma – of the dissenting director. Here's my summary of the case:**

**Ballingall v. Carleton Condominium Corporation No. 111 (Ontario Superior Court) April 21, 2015**

**Condominium corporation given opportunity to pass rule to establish definition of family. One of the directors found to have acted in bad faith**

The condominium's Declaration contained a provision stating that the units could be used only as private single family residences – but contained no definition of the term "family". The corporation's legal counsel recommended that the corporation pass a rule to establish a definition of family. Otherwise, the narrow definition endorsed by the courts in other cases might be imposed upon the condominium corporation. [See *Nipissing Condominium Corporation No. 4 v. Kilfoyl* (Condo Cases Across Canada Parts 28 and 30, November 2009 and May 2010) and *Chan v. Toronto Standard Condominium Corporation No. 1834* (Condo Cases Across Canada Parts 33 and 39, February 2011 and August 2012).]

In 2012, a majority of the board voted to proceed with a proposed rule to establish a definition of family. The proposed definition excluded groups of unrelated persons who did not intend to live together permanently (such as most groups of cohabiting students). The rule also included a provision grandfathering or exempting existing occupants from the provisions of the rule. In accordance with the board's majority decision, the proposed rule was prepared for presentation to the owners (for a vote).

One of the directors, MacMillan, did not agree with the proposed rule. MacMillan resided in the condominium, but also owned (and leased) a number of other units. He felt that landlords should be able to continue leasing to unrelated persons (such as groups of students). He felt that the new rule was a threat to his investments, and to the investments of many other owners. He campaigned actively against the rule, seeking to persuade owners to vote against it.

At the AGM on June 17, 2013, the proposed rule was voted down – 78 for to 127 against.

One of the directors, Ballingall, subsequently resigned from the board and started this Court application along with three of the other owners, for the following relief:

- a) An order requiring that the condominium corporation enforce the "single family use" provision in the Declaration;
- b) A declaration that MacMillan had acted in bad faith;
- c) A declaration that the condominium corporation had acted oppressively, by unfairly disregarding the interests of the Applicants.

After the application was commenced, the reconstituted board (still including MacMillan) met with legal counsel to revisit the possibility of passing a new rule to establish a definition of family. The board then prepared a new rule containing the same definition (as in the rule that had been voted down) but a different grandfathering provision. The revised grandfathering provision included grandfathering of existing owners as long as they confirmed that their understanding (at the time of their purchase) was that they would be able to lease their unit(s) to unrelated persons. This proposed new grandfathering would exempt the units of those owners (from the definition of family), while they were owned by the grandfathered owners, for a period of ten years. Therefore, one of the key issues on the application was: Should the condominium corporation be permitted an opportunity to pass this new rule? The Court held as follows:

*continued...*

## Condo Cases Across Canada Cont'd.

- a) The Applicants were entitled to have the "single family use" provision in the Declaration enforced.
- b) However, the condominium corporation should be permitted an opportunity to pass the proposed new rule, but with a modified grandfathering provision. The Court said that grandfathering of occupants, and also grandfathering of certain owners, did make sense in this case. However, the Court said that the proposed grandfathering provision was not reasonable or in keeping with the Declaration. Among other things, the Court said that the ten-year grandfathering was too long. The Court said that three to five years would be more appropriate.
- c) MacMillan had acted in bad faith, up until the commencement of the Application (when he began to support the idea of a new rule).
- d) The condominium corporation had not acted oppressively.

The Court's decision including the following:

*Once this litigation was commenced, the new Board moved quickly to pass a new Rule) that mirrored the previous version (of the rule) passed by the previous Board (under the leadership of Ballingall) aside from the grandfathering provisions. In that the earlier version of the rule had been rejected at an AGM due, in great measure, to the restrictive grandfathering provisions, it was reasonable for the new Board to expand those provisions. . . . Although I have found that the grandfathering provisions in the new Rule are unreasonable and inconsistent with the Declaration, the evidence is inadequate to persuade me that the Board's passage of the Rule amounted to an abuse of power, a wrong of the most serious sort, or an act of bad faith.*

*The Board shall have 60 days in which to amend the grandfathering clause (in the Rule) to be a truly temporary, transitional, provision to wean landlord owners off rentals to multiple, unrelated, transient tenants not meeting the expanded definition of "single family", while at the same time being reasonable and consistent with the Declaration. Failing the passage of such an amendment, the Corporation must interpret and enforce (the single family use provision) of the Declaration. . . . in a fashion consistent with current Ontario Law regarding the meaning of "single family residence" in the condominium context.*

### BC Case – Getzlaf v. The Owners, Strata Plan VR 159 (British Columbia Supreme Court) March 19, 2015

#### Owner had no right to install privacy screen

The strata corporation was required to replace a roof membrane (and the landscaping on top of the membrane). This work affected a patio area adjacent to the strata lot of one of the owners. In particular, this "resulted in a loss of privacy

and negatively impacted the aesthetics of (the owner's) surroundings".

The owner sought permission of the strata corporation to install a privacy screen, but this was refused, pending completion of the project. The owner nevertheless went ahead and installed a privacy screen; and as a result the strata corporation levied fines against him. The owner then petitioned for the following relief:

- A remedy for the actions of the respondent regarding the replacement of the upper parkade membrane project.
- That the respondent restore the upper parkade to its original design, being a rooftop garden;
- That the respondent restore the petitioner's brick wall foundation such that he can then install anchor posts for the installation of a fence;
- That the respondent be enjoined from removing the petitioner's existing privacy screen without his authorization; and
- A reversal of the fines levied by the respondent.

The Court dismissed the owner's petition. The Court said:

*The respondent (Strata Corporation) has not disregarded the petitioner's desire for privacy. It is in the process of obtaining estimates for the installation of privacy screening, fencing, and plants for the benefit of units 103 and 104 (the petitioner's unit) that would be consistent in appearance with the rest of the strata complex.*

### Alberta Case – Owners: Condominium Plan No. 762 1302 v. Stebbing (Alberta Court of Queen's Bench) April 7, 2015

#### On appeal, cat permitted to stay as a grandfathered pet

The condominium's by-laws permitted pets, but only with written consent of the board. The board had not given consent for the owner's cat, and the lower Court held that the cat was in violation of the by-law. However, the lower Court ordered that the enforcement of the by-law be stayed or delayed until the cat either died of natural causes or was relocated. [See Condo Cases Across Canada, Part 48, November 2014.]

The corporation appealed, arguing that the lower Court had not shown sufficient deference to the corporation's decision to require that pets be removed.

The Appeal Court noted that the board had decided, in 2012, to eliminate cats from the building. This objective would be met by refusing new cats, and by ordering the removal of all cats whose owners had not obtained written permission from the board. Cats which had received permission at that time were "grandfathered" and permitted to stay. The owner (Ms. Stebbing) had moved into the building in 2010, but had never received consent for her cat.

The Appeal Court held that Ms. Stebbing should be permitted to keep her cat as a "grandfathered pet" because the corporation had either permitted the cat or had failed to take steps with reasonable haste to require its removal. 🍁



## EXECUTIVE PROFILE



**Kim Coulter, ACCI, FCCI**  
**Coulter Building Consultants Ltd.**

For the past 37 years, Kim's expertise has been focused on the evaluation and problem correction of multi-unit residential, commercial, institutional and recreational properties throughout North America. This has ranged from building envelope performance testing on low energy housing in the Canadian Arctic to building condition assessments of five star luxury resorts in Florida. With this diverse understanding of the performance of building claddings, in 1993 Kim was appointed by the Canadian Commission on Building and Fire Codes to sit as a member on Part 5 of the National Building Code of Canada Standing Committee on Environmental Separation. This section of the code deals with building envelope design as it applies to buildings other than single family housing. He was a committee member until 2008.

In 1997 Kim established Coulter Building Consultants Ltd., Consulting Engineers & Building Scientists, with a specific focus on condominium

engineering. In 1999 he was invited to become a board member of the Golden Horseshoe Chapter of CCI and two years later became its Board President until 2009, when he became Board Chair. Kim is still on the GHC board. Kim has been on the CCI National Council and Executive Board since 2006. He received his ACCI (engineering) in 2001 and FCCI in 2007. He is a featured writer for CCI and ACMO (Association of Condominium Managers of Ontario) and has spoken at numerous condominium and building science related conferences and seminars across Canada.

Since 2011, Kim has been a member of Burlington's Joseph Brant Hospital Building and Facilities Committee, advising the Board of Governors on the \$312 million redevelopment project which broke ground earlier this year.

Kim served for eight years as Board President of the condominium corporation where he lives, and experienced firsthand, the unique challenges and rewards that one often reads about in CCI National News. 🍁

2015

**October 22-23, 2015**  
**TORONTO, ONTARIO**  
**Chelsea Hotel, Toronto**  
33 Gerrard St. W., Toronto

Canadian Condominium Institute  
**CCI**  
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your condo connection

**BY CHAPTERS FOR CHAPTERS**

**MARK YOUR CALENDARS**  
FOR THE FALL NATIONAL MEETINGS

**OCTOBER 22-23, 2015**

- ▶ Leaders' Forum
- ▶ National Council and National Committee Meetings

**OCTOBER 22, 2015**

- ▶ National Annual General Meeting
- ▶ National Awards Dinner

**NEW DATES,  
NEW FORMAT!**

CCI National News 🍁 Summer 2015

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## CHAPTER CHATTER



**Manitoba Chapter** — Manitoba's new Condominium Legislation came into effect on February 1st of 2015 and our Education Committee has delivered an exciting program to address the needs of the various constituents of CCI including dedicated sessions for boards and property managers. To date we have had four full education sessions on the Act and seven Lunch and Learn sessions — a very full program indeed!

The Property Tax Fairness Campaign is continuing to make inroads and foster relationships with politicians at both the municipal and provincial level. Change of the type we are seeking takes time and significant effort. This initiative continues to be important to our members.

We have managed a significant increase in our membership this past year. We are up from 302 members last year to 319 members this year. While this is partly attributable to the need for education driven by the requirements of the new condominium legislation I would also like to suggest that it is due to the quality of our newsletter and programming.

Several of the CCI board and our administrator attended the recent CCI Spring Leadership sessions in Windsor, Ontario. Windsor did a phenomenal job at putting together the conference. We extend our thanks to the Windsor Chapter for their hard work and to CCI National for the quality of the education sessions. I believe those from our board who attended were inspired by the sessions and we have returned to Manitoba with new ideas and renewed enthusiasm.

Along with our core services of Education and our Newsletter in 2015 — 2016 you will see a more visible social media presence for Manitoba Chapter.

*Pamela Pyke, President  
CCI Manitoba Chapter*



### Newfoundland & Labrador Chapter

— I regrettably missed the June Seminar in Windsor but our Education Chair, Dave Cumming attended and he certainly gave a glowing report on the event to us at our last meeting. That was not a surprise to me having been the beneficiary of many of those events. As a result of that meeting, we decided that we will have two people from our Chapter attend all future National meetings, whenever possible. We are doing well financially and we thought it well worth the cost to have other Directors from our Board attend future meetings.

Our Chapter has been busy during the winter and spring preparing for our renewals, spring seminar and newsletter. We normally do not have a lot of activity during the summer months, however, this year our Education Committee is quite busy putting the finishing touches on the roll out of our first Director's Course. It has taken a lot of hard work and the better part of a year to bring it together, and our Chapter is very grateful to Dave who took the lead and completed most of the work on this project. As it nears completion, we still have a daunting task to secure suitable people to teach the course material. We believe we can do the entire course in one day, preferable on a Saturday. If there is enough interest we hope to offer it several times throughout the fall and winter.

If any of you have had the good fortune to visit our Province, you know that we have a small population, but we are geographically vast. It is interesting to see our Chapter being promoted across the large expanse of this Province. Most of our Newsletters present a "Feature Condo" on its cover and contains an article on that Corporation. Our last Newsletter's "Feature Condo" was a Corporation from Corner Brook which is on the west coast of our Province. Directors of that Corporation have also travelled to

St. John's to attend several of our Seminars. It is an eight hour drive or nearly an hour's flight between those cities and it is certainly not a one day trip. On the horizon, rumour has it that we are also being scouted by Labrador City!

*Carol Burke, President  
CCI Newfoundland & Labrador Chapter*



### North Alberta Chapter

CCI North Alberta recently held free seminars in Fort McMurray, Grande Prairie, and two sessions in Edmonton during the months May and June to highlight the new changes in the Condominium Property Act that was passed in December 2014. More than 500 individuals attended these sessions. Many thanks to condominium lawyers Victoria Archer and Hugh Willis for generously donating their time and efforts in providing these seminars.

CCI North Alberta held the 6th Annual Conference and Trade Show in Edmonton on May 29th and 30th. Once again we grew the number of attendees and participants to new heights, and the feedback we received was very positive. I want to express my gratitude to all the presenters and sponsors for making this conference such an amazing event. Particularly, I want to thank HUB International Phoenix Insurance Brokers for their title sponsorship; we could not provide these events in an affordable way without our business partners and members.

This summer is not going to be restful for the CCI Board of Directors, with multiple projects on the go for our chapter. We host our Annual Golf Tournament on August 18, 2015 at the Eagle Rock Golf and Country Club, which is going to be our largest yet based on registrations so far.

We are in the process of re-writing our constitution,  
*continued...*

## Chapter Chatter Cont'd.

as well as our course materials related to the Condominium Management 100-300 Series. Our Board of Directors is attending an all-day retreat on July 17, 2015 to set the goals and direction for the 2015-2016 year.

I am very pleased to announce that long time member Alan Whyte has been hired on as of June 1, 2015 in the capacity as Assistant to the Executive. He has been so critical to our success this past month, attending a number of sessions with the Alberta Government which includes discussions related to the Condominium Property Act and its regulations and as a committee member on the implementation committee for property management licensing. Hiring Alan alongside our long time administrator Joyce Schwan has allowed CCI North Alberta to build capacity as an organization to engage in new education, membership, government advocacy, and communication goals.

Enjoy the rest of summer!

*Anand Sharma, President  
CCI North Alberta Chapter*



## North Western Ontario Chapter —

The North Western Ontario Chapter had a great year again.

We made a concerted effort to improve attendance at our seminars, and engage the directors of condos and owners of condo units. We had a seminar in the spring of 2014 on Condo reform and Armand Conant of Toronto was our guest speaker. There was a great turnout. We are having Armand attend again in the fall of 2015 to continue the Condo Reform and he is now going to comment on the draft legislation put forward by the Province a month ago.

*continued...*



### *Thank you to our sponsors:*

#### PLATINUM LEVEL

**CCI National**  
**Elia Associates**  
**Gordon B. Lee, CA**  
**Smith Valeriote Law Firm LLP**  
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**PBL Insurance Limited**  
**RBC Wealth Management**  
**WSP Group**



The Windsor Chapter - Fabulous Hosts!



Rum Runner Dinner



Beautiful Day for a golf game!



Da Bosses!

A packed room at the sessions





## Chapter Chatter Cont'd.

These kinds of presentations were made possible with a special one-time grant from CCI National, and have raised the awareness of CCI in our district and has reinvigorated our seminars.

CCI NWO has been making an effort to get into the 21st century communications and social media. We are revamping our web page and looking at Face Book and Twitter as a way to connect with the condo community.

We are making concerted efforts to get email addresses of the officers and directors of all of the condo corporations in Thunder Bay and the area, so that we can communicate better, cheaper and faster with our newsletters (including Nationals revamped electronic newsletter) and seminar information.

Our newsletter committee is getting more advertising from our members and also having more articles about our members. The newsletter is a professional looking product and improving with every issue.

The North West of Ontario is growing its condo community each year, and more and more people are moving into condos. This is consistent with the demographics of the north changing as the population ages. As the Byrds once sang in the 60's, ".... for the times they are a changing ....."

Doug Shanks, President  
CCI North Western Ontario Chapter

## UPCOMING EVENTS

### Golden Horseshoe Chapter:

September 24, 2015 - AGM

### Huron Chapter:

September 18, 2015 - Condo Conference and AGM

September 26, 2015 - North Bay Forum

### Manitoba Chapter:

October 1, 2015 - AGM and Fall Seminar

October 7, 2015 - CCI President's Club

### Ottawa & Area Chapter:

September 2015 - CCI/ACMO Conference and Trade Show (Kingston)

October 2015 - AGM and Seminar

November 2015 - Fall Directors Course

### South Alberta Chapter:

Fall 2015 - CM 100 Level Course

Winter 2016 - CM 200 Level Course

Spring 2016 - CM 300 Level Course

### Toronto & Area Chapter:

July 8, 2015 - Condo Fraud Seminar

September 17, 2015 - The Utility Jolt... Shocked Again!

September 29, 2015 - Level 101 Course

October 14, 2015 - Level 102 Course (Condo Governance)

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

# PLAN NOW!

## TO ATTEND THE 19TH ANNUAL CONDOMINIUM CONFERENCE



PRESENTED BY:  **ACMO** Association of Condominium Managers of Ontario  
IN PARTNERSHIP WITH  **FINE & DEO** Real Estate and Legal Services  
Canadian Condominium Institute CCI Institut canadien des condominiums

Two days of educational sessions for professional condominium managers, condominium directors and other professionals working in the industry;

**PLUS** The largest condominium industry trade show in Canada.

### Keynote Speaker: Warren Macdonald

who became a double amputee when he lost both legs in a freak rock fall on a remote Australian island 18 years ago. Macdonald's story is one of perseverance against death-defying odds.

### Sessions include

our ever popular Rapid Fire Legal session along with

- **Rapid Fire Engineering and Rapid Fire Insurance**
- **Health & Safety**
- **Shared Facilities**
- **The Great Director Debate**
- **AGM's**
- **Status Certificates and much more**

**November 13-14, 2015**

Toronto Congress Centre - North Building

VISIT THE CONFERENCE WEBSITE FOR FULL PROGRAM DETAILS: [WWW.CONDOCONFERENCE.CA](http://WWW.CONDOCONFERENCE.CA)

On Friday night, delegates will be able to relax and mingle as they enjoy jazz from Toronto's ultimate instrumentalist, two-time Juno Award winner Bob DeAngelis.

# #leadingtheway

## Steps before this bill becomes law

Readers must keep in mind that Bill 106 has not been adopted as of yet.

Before Bill 106 becomes law, it must go through several more stages, including two more “readings” and royal assent. As part of last month’s “first reading”, the bill was basically introduced at Queens Park and the MPPs accept the bill for future debate. This is when it was assigned its bill number (Bill 106). The real debate over the substance of the bill will take place during the “second reading”. Sometimes bills pass easily to third reading, sometimes they are further examined by Standing or Select

Committees. It is during the “third reading”, after a final debate, that the MPPs will vote on it. Once the majority of the MPPs have voted in favour of a bill, it is presented to the Province’s Lieutenant Governor for royal assent and an effective date is usually given. This is when a bill becomes law. Until then, condominiums are still being regulated by the current *Condominium Act*.

There are probably many more months, and perhaps even years, before this new Act is enacted. And we can expect more changes to be made to this version of the Bill before it gets adopted as law. At least we now have something to sink our teeth

into and start dreaming about what the condo industry in Ontario will look like in the future.

\* This article was first published on **CondoAdviser.ca** and is reproduced here with permission

*Rod heads Gowlings’ Condominium Law Group. He regularly publishes on Gowlings’ condo law blog CondoAdviser.ca. He is on the board of directors of the Ottawa chapter of CCI and is the co-editor of its quarterly magazine. Rod also sits on the board of directors of his own condominium corporation. ■*

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## NEWS RELEASE

# CANADIAN CONDOMINIUM INSTITUTE WELCOMES BILL 106

TORONTO, ON – JUNE 24, 2015 – Condominium owners across Ontario are rejoicing and they are not alone!

The Canadian Condominium Institute (CCI) is also celebrating Bill 106, the Protecting Condominium Owners Act, which the Ontario government tabled on May 27. Positive changes in Bill 106 include establishing mandatory licensing of condo managers and strengthening financial management rules for condo corporations to help prevent fraud and mismanagement. The Ontario Caucus of CCI, a national, independent, non-profit body dealing exclusively with condominium issues, has been among those pushing for legislative reform in Ontario for more than a decade. CCI members played an active role in the broad-based public consultations and various working panels over the past two-and-a-half years. Thus, it was an exciting day when the Minister of Government and Consumer Services, David Orazietti, introduced the Bill and it was given First Reading and passed.

The proposed legislation includes mandatory education for condominium directors.

Tania Haluk, the current Chair of the CCI Ontario Caucus states “The Canadian Condominium Institute has been front and centre in providing director education since 1982 and we anticipate, that despite mandatory education being offered through a newly formed Condo Authority, CCI will continue to be a long term source of ongoing training for directors”.

The CCI Ontario Caucus appreciates the government did not introduce a new Condominium Act, but rather aims to amend the present one. It welcomes the changes which are extensive and significant. Among them, notice of off-budget spending whereby a condominium board would have to notify owners if it proposed an expense exceeding the budgeted amount by more than a set margin. CCI believes transparent financial management is the foundation of a successful condominium corporation and community.

Bill 106 also calls for the establishment of a Condo Authority to oversee the education of owners and directors and to provide a dispute resolution service. It also creates a second and distinct authority to oversee the

licensing, discipline and regulation of condo property managers and management companies.

The Canadian Condominium Institute looks forward to Bill 106 receiving Second Reading then going to Committee Hearings where CCI will offer more input and feedback. Once the Bill passes the Third Reading by the Ontario Legislature and receives Royal Assent from the Lieutenant Governor, it will become law.

CCI has numerous resources and expert members across the province available, who are able to provide more information and perspectives to the media regarding the proposed new Act.

Ontario currently has approximately 700,000 condo units and 10,000 condo corporations. About 1.3 million Ontarians live in a condo and more than half of new homes under construction in the province are condos, according to the Ministry of Government and Consumer Services. ■

# Condominium Act Amendments

## (FIRST READING)



By James Davidson, LL.B., F.C.C.I., Nelligan O'Brien Payne LLP

Proposed amendments to the Condominium Act have now received first reading. The following chart is intended to be a list of the “highlights” that we see in the amendments. Note that this is not intended to be a comprehensive list of the amendments. Again, this is just a list of the highlights, as we see them.

### New/Revised Definitions (Section 1(1))

- “**condominium guide**” [new definition]
- “**declarant affiliate**” [new definition]
- Unit “**improvement**” [new definition]
- “**non-leased voting unit**” [to replace the term ‘owner-occupied unit’ in Section 51]
- “**repair**” [new definition, which includes repair or replacement after normal wear and tear (currently part of maintenance as defined in Section 90)]
- “**residential condominium conversion project**” [new definition] “**standard unit**” [will include a prescribed description – if there is no standard unit by-law]

### Condominium Authority Part I.1 (Sections 1.1 to 1.30)

- Independent (non-Crown), self-funded, not-for-profit corporation
- Start-up funding from Province; subsequent funding from user fees and from small monthly fees payable by all Ontario condominium corporations
- Mandate:
  - **Directors’ education / training**
  - **Information and related resources for condominium owners, corporations, etc.**
  - **Administration of Condominium Authority Tribunal**

### Condominium Authority Tribunal Part I.2 (Sections 1.31 to 1.48)

- **Decision-making authority** for certain types of disputes between corporations, owners, occupiers, mortgagees, purchasers. [Note: Occupiers will not have the right to initiate applications to the Tribunal.]

- Tribunal to have power to:
  - Order **alternative dispute resolution**;
  - Order **compliance**;
  - Order **compensation** up to greater of \$25,000 or prescribed amount;
  - Order payment of **costs**;
  - Order payment of a **penalty** (lesser of \$5,000 or prescribed amount) in relation to non-compliance with obligation to allow for examination of records;
  - Order **any other relief the Tribunal considers fair**.
- Any amounts owed by owner under order of Tribunal added to owner’s common expenses
- Any amounts owed by corporation under order of Tribunal may be set-off against common expenses
- Appeal to Division Court on questions of law Orders of Tribunal to be public

### Tarion (Section 2(2.1))

- **Residential conversions** to be covered by Tarion

### Declaration Section 7

- Declaration to include a statement as **to how common expense contributions and common interests have been determined by the declarant**
- Declaration may contain a statement of the common expenses and also a statement of the **circumstances that may allow for any amount to be added to an owner’s common expenses**. [Note: This appears to mean that, for an amount to be added to an owner’s common expenses, there will have to be a provision allowing for such in the Declaration.]



<p><b>Condominium Registrar</b> <b>Part II.1 (Sections 9.1 to 9.9)</b></p> <ul style="list-style-type: none"> <li>• Corporations to be required to file initial, turnover and annual <b>returns</b> (containing prescribed information)</li> <li>• Corporations to be required to file <b>notices of changes in Board membership</b> and any other prescribed information</li> <li>• Registrar to maintain <b>public electronic database</b></li> </ul>	<p>to be prevented from “selling” property to condominium corporations (for consideration).]</p>
<p><b>Penalties, Fines</b> <b>(Section 17(4))</b></p> <ul style="list-style-type: none"> <li>• <b>Penalties or fines to be prohibited.</b></li> <li>• Corporations can only recover <b>actual losses or costs</b></li> </ul>	<p><b>Declarant’s Liability</b> <b>(Section 26.2)</b></p> <ul style="list-style-type: none"> <li>• Declaration, By-laws, Agreements, etc. <b>cannot place limits on liability of Declarant</b>, unless approved by post-turnover Board. <i>[This essentially reverses the TSCC 2095 v. West Harbour Court decision.]</i></li> </ul>
<p><b>Entering Units</b> <b>(Section 19(2))</b></p> <ul style="list-style-type: none"> <li>• In addition to the corporation’s right to enter units or exclusive-use common elements on reasonable notice, Declaration or By-laws can give corporation the right to enter <b>without notice in an emergency</b></li> </ul>	<p><b>Notice to Owners</b> <b>(Section 26.3)</b></p> <ul style="list-style-type: none"> <li>• Corporations to be obligated to provide <b>regular notices to owners</b>, containing prescribed information</li> </ul>
<p><b>Shared Facilities Agreements</b> <b>(Section 21.1)</b></p> <ul style="list-style-type: none"> <li>• Shared facilities <b>agreements to be mandatory</b> in relation to various types of shared properties</li> <li>• Parties to agreements may make <b>joint by-laws or rules, without involving the owners</b></li> </ul>	<p><b>Directors</b></p> <ul style="list-style-type: none"> <li>• <b>Directors’ training (education) to be mandatory</b> (Section 29)</li> <li>• Regulations to require certain <b>disclosure from Directors</b> (Section 29)</li> <li>• Improved definition of Board “<b>quorum</b>” (Section 32(2))</li> <li>• Meetings may be held by <b>teleconference</b> (even without a by-law) if all Directors consent (Section 35(5))</li> <li>• Non-leased voting position only required <b>if a minority of units are not leased</b> (Sections 51(5) and (6))</li> </ul>
<p><b>Telecommunications Agreements</b> <b>(Section 22)</b></p> <ul style="list-style-type: none"> <li>• Revised provisions respecting telecommunications agreements</li> </ul>	<p><b>Contracts</b> <b>(Section 39.1)</b></p> <ul style="list-style-type: none"> <li>• “Procurement process” (<b>tendering</b>) may be required for certain contracts</li> </ul>
<p><b>Loss of Right to Sue</b> <b>(Section 23.1)</b></p> <ul style="list-style-type: none"> <li>• Corporations in arrears of amounts owed to Condo Authority or Condo Authority Tribunal may lose the right to sue</li> </ul>	<p><b>Performance Audits</b> <b>(Section 44)</b></p> <ul style="list-style-type: none"> <li>• Various amendments respecting first year performance audits</li> </ul>
<p><b>Property Acquisitions</b> <b>(Section 26.1)</b></p> <ul style="list-style-type: none"> <li>• No property acquisitions (for consideration) to be permitted except where arranged by post-turnover Board. [Declarants therefore</li> </ul>	<p><b>Meetings</b></p> <ul style="list-style-type: none"> <li>• <b>Preliminary/Advance Notice of Meeting</b> (20 days before actual notice of meeting) to be required for all election meetings (Sections 45.1 and 47)</li> <li>• Revised provisions for Requisitioned Meetings (Section 46)</li> <li>• <b>Reduced quorum requirement</b> (15%) for third or subsequent attempt to hold turnover</li> </ul>

<p>meeting or AGM, unless the by-laws state otherwise (Section 50)</p> <ul style="list-style-type: none"> <li>• By-laws may allow for voting at meeting by “telephonic or electronic means” (Section 52(1))</li> <li>• Prescribed (mandatory) form of proxy (Section 52(4))</li> <li>• Ballots and proxies are confirmed to be corporate records</li> </ul>	<p><b>Disclosure Statements</b> (Sections 72, 72.1 and 74)</p> <ul style="list-style-type: none"> <li>• <i>Enhanced disclosure obligations</i> for Declarants</li> <li>• New Regulations to govern <i>Declarants’ budgeted reserve fund contributions</i></li> <li>• New provisions respecting material changes</li> </ul>
<p><b>Record of Owners and Mortgagees</b> (Section 46.1)</p> <ul style="list-style-type: none"> <li>• Expanded provision respecting corporation’s obligation to maintain a record of the names and addresses of owners and mortgagees</li> <li>• Owners not obligated to give an address for service. If owner does not give an address for service, the unit address is then the owner’s address for service</li> </ul>	<p><b>First-year deficit</b> (Section 75)</p> <ul style="list-style-type: none"> <li>• Declarant may be responsible for <i>inadequate contribution to reserve fund</i> (if reserve fund budget not prepared as required by the Act)</li> <li>• New Regulations will explain how Section 75 applies to <i>phased condominiums</i></li> </ul>
<p><b>Records</b> (Section 55)</p> <ul style="list-style-type: none"> <li>• New regulations anticipated respecting <i>retention</i> periods for records</li> <li>• New regulations anticipated respecting inspection of records, including procedures as well as <i>fees payable to the corporation</i></li> <li>• <i>Penalty</i> for non-compliance (in relation to examination of records) to be determined by Regulation</li> <li>• Depending upon nature of dispute, claim can be made <i>to Small Claims Court or to Condominium Authority Tribunal</i></li> </ul>	<p><b>Implied Covenants in Original Purchase Agreements</b> (Section 79)</p> <ul style="list-style-type: none"> <li>• Additional implied covenants</li> </ul>
<p><b>By-laws</b> (Section 56)</p> <ul style="list-style-type: none"> <li>• No borrowing without a <i>by-law to authorize the specific borrowing</i></li> <li>• Voting requirement remains a majority of all units, but this may be reduced by regulation</li> <li>• By-law can be passed <i>to govern voting methods</i></li> </ul>	<p><b>Sale of entire Property by Corporation</b> (Sections 82.1 and 82.2)</p> <ul style="list-style-type: none"> <li>• New provisions relating to a sale of the entire property. <i>[This provision perhaps supersedes Section 124 (?)]</i></li> </ul>
<p><b>Condominium Guide</b> (Section 71.1)</p> <ul style="list-style-type: none"> <li>• <i>Condominium Guide</i> to be prepared (likely by Condominium Authority) and included by Declarants with Disclosure Statements</li> </ul>	<p><b>Tenancies</b> (Section 83)</p> <ul style="list-style-type: none"> <li>• Notice periods (for notices to corporation) reduced to 10 days</li> </ul> <p><b>Common Expenses</b></p> <p><u>Annual Budget (Section 83.1)</u></p> <ul style="list-style-type: none"> <li>• New provisions respecting budgets, including required <i>notices to owners</i></li> <li>• Notices to owners will also be required <i>if expenses exceed budgeted amounts by prescribed amounts</i></li> </ul> <p><u>Additions to Common Expenses</u></p> <ul style="list-style-type: none"> <li>• Owners to be given notice within 15 days of prescribed amounts being <i>added to the owner’s common expenses</i> (Section 84(4))</li> <li>• Owners will then have a prescribed procedure by which to <i>challenge</i> any addition to the owner’s common expenses (Sections 84(5)-(11))</li> </ul>

## Repair and Maintenance (Sections 89-92)

- Various revisions to repair and maintenance provisions.
- Owners to be obligated to repair their units (unless the Declaration states otherwise).
- The definition of maintenance is deleted. [See new definition of “repair”.]
- The Declaration may say that owners must repair or maintain any parts of the common elements
- The Declaration may say that the corporation must repair or maintain any part of the units

## Reserve Funds (Section 93)

- Regulations may prescribe *additional purposes* for reserve funds
- Regulations may define “major repair” (reference to “replacement” dropped)
- *“Adequate” to be defined in regulations*
- Corporation must obtain *expert opinion* (respecting need for early reserve fund study) if reserve fund balance is *below a prescribed amount*

## Modifications (Sections 97 and 98)

- New definition of “modification” to include *combination or series of changes that “relate to each other”*
- Threshold for “without notice” modifications to be lesser of 3% of budget or \$30,000 (and provided the owners would not objectively regard the modifications as causing a material reduction or elimination in their use or enjoyment)
- Regulations to deal with determining “cost” of modification

## Responsibility for Deductibles under Corporation’s Insurance Policy (Sections 105 and 107)

- Owner responsible for deductible if *any insured damage is caused by owner, lessee or occupant of the unit*
- *Any other exception to require a Declaration amendment with 90% consent* [Note: “Insurance deductibles by-laws” to be eliminated.]

## Investments (Section 115)

- Investments must be either
  - (a) government issued, or
  - (b) government secured, or
  - (c) insured by CDIC or by the Deposit Insurance Corporation of Ontario

## Unreasonable noise or nuisance prohibited (Section 117(2))

- *Unreasonable noise prohibited*
- Other *nuisances, annoyances or disruptions* may also be prohibited by regulation

## Mediation and Arbitration (Section 132)

- Regulations are to contain mediation and arbitration procedures (unless corporation has a by-law to govern the procedures, or the parties agree to other procedures)
- Mediation and Arbitration under s. 132 will not apply where Condominium Authority Tribunal or Court has jurisdiction over the dispute
- Arbitration awards to be made public
- New enforcement provisions

## Compliance Orders – Court (Section 134)

- Court Application not available for disputes which are subject to mandatory mediation/arbitration under s. 132, or which fall within the jurisdiction of the Condominium Authority Tribunal
- *Successful party – the corporation or an owner – could be entitled to “additional actual costs incurred in obtaining the order”*
- Regulations may define “additional or actual costs”

## Enforcement – Condominium Authority and Registrar (Sections 134.1, 134.2, 136.1, 136.2)

- Various new enforcement provisions respecting Condominium Authority and Registrar

## Offences (Section 137)

- Increased penalties
- New offence – Declarant or Declarant affiliate failing to meet new website requirements (for Declarants and Declarant affiliates) to be contained in regulations



### Owners Right to Consent

- Owner loses right to consent if in arrears for 30 days: [Amendments to Declarations or Descriptions (Section 107); Termination of Telecommunications Agreements (Section 22); Dispensing with audits (Section 60); Amalgamation (Section 120); Sale of Exclusive-Use Common Elements (Section 124)]  
*[Note: But does this reduce the total required number of consents?]*

### Licensing of Managers

- **CONDOMINIUM MANAGEMENT SERVICES ACT, 2015**; Schedule 2 to Condominium Act Amendments
- New administrative authority (not-for-profit corporation) to be established (not a Crown corporation) (Sections 2-30)
- Condominium managers and condominium management providers **must be licensed** (Section 34)
- License requirements to be set out in Regulations (Section 37)
- **Condominium management agreements must be in writing and licensees must provide services in accordance with the contracts** (Section 48)
- Every condominium management provider must also designate one manager as the **"principal condominium manager"**; principal condominium manager **must ensure condominium management provider complies with Condominium Management Services Act and Regulations** (Section 49)

- Condominium management provider may be required to provide financial reporting to the registrar of the authority (Section 50)
- Condominium management provider must only hire licensed employees (for tasks requiring a license) (Section 51)
- Condominium management provider must ensure that their condominium managers comply with the Condominium Management Services Act and Regulations (Section 51)
- Condominium manager must be employed by a condominium management provider (Section 51)
- Any licensee must **disclose (to the client) any interest of the licensee** in a contract or transaction to which the client is or will be a party (Section 52)
- Any licensee must **relinquish records to the client** upon termination of the management contract (Section 53)
- Licensees must not furnish, counsel, or knowingly assist in providing false information respecting the providing of condominium management services (Section 54)
- **Licensees must not counsel, advise, or knowingly assist in contravening the Condominium Management Services Act, the Condominium Act, or any other prescribed Act** (Section 55)
- Provisions respecting complaints, discipline, inspections, investigations and enforcement (Sections 56-70)



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# Reserve Fund Investing

By Kale Wild  
Raymond James Ltd.

Long gone are the days when a condominium reserve fund could be invested in a simple GIC and earn a 4-5% return. With Canadian inflation currently at 1.20%, and the Canadian bank rate also around that level, many condominium reserve funds are having difficulty just keeping pace with inflation. This does not bode well in the battle against rising maintenance costs, and in turn, rising condominium fees. Many condominium corporations are following the same investment strategies used during the high rate eras. However circumstances have changed, and in today's ultra-low rate environment, those managing reserve funds must dig a little deeper into the investment landscape in order to earn a positive real return (net of inflation) and allow the reserve fund to work for the corporation.

## The Reserve Fund Study

When determining the required condo fees, the reserve fund study assumes an arbitrary return on investment in the reserve fund. This number is often between 2%-4%. Given that the current return on a one year GIC is roughly 1.5%, many condo boards find their reserve funds underfunded during the next study, and are thus required to increase condo fees to make up the shortfall. This increase in condo fees essentially adds to the cost of ownership (akin to an extra mortgage payment), and has the potential to decrease property values over time.

## What are you Allowed to Invest in?

There is much confusion, and misinformation floating around surrounding section

115(5) of the Condominium Act, 1998 which deals with "eligible securities" for the reserve fund. The Condominium Act, 1998 defines eligible securities as:

*"Bonds, debentures, guaranteed investment certificates, deposit receipts, certificates of deposit, term deposits or similar instruments that:*

- 1. Are issued or guaranteed by the government of Canada or the government of any province of Canada; or*
- 2. Are issued by an institution located in Ontario insured by the Canada Deposit Insurance Corporation or the Deposit Insurance Corporation of Ontario; or*
- 3. Are securities of a prescribed class (currently there are no securities of a prescribed class)."*

We have encountered conflicting interpretations regarding the wording above. If read verbatim, we would interpret the above as restricting condominium corporations to investing their reserve funds in 100% principal-guaranteed solutions that are issued by a CDIC-insured bank. Some interpretations seem to infer only CDIC-insured investments are eligible (i.e. GIC's under \$100k per bank). Either way your board interprets the above, there are options available that offer the opportunity to earn well in excess of the 1.5-2% fixed returns currently available on GIC's.

## Ways to Increase Returns

### Market-Linked GICs

The first step out of a fixed rate Guaranteed Investment Certificate (GIC) with full CDIC coverage, would be Market-Linked

GICs. These are still insured by CDIC (up to \$100,000) and offer some form of participation in the positive performance of a basket of stocks, commodities, a stock index etc. The participation is often capped (at say 4.5% a year) or only participates in a percentage (current examples: 50-90% participation, based on a basket of blue chip Canadian stocks) of the gains of the underlying securities.

Some of these Market-Linked GICs guarantee a minimum return even if the underlying security experiences a negative return, whereas some carry the risk of earning a 0% return if the underlying securities do not experience a positive return.

### Principal-Protected Notes (PPN's)

There are other structured solutions which are not insured by CDIC, but are issued by institutions (the big 6 banks) insured by CDIC, with the full backing of their creditworthiness protecting your invested capital. It would be up to each board of directors to determine if they are comfortable with the creditworthiness of the issuing bank (examples: BMO, BNS, TD, CIBC).

It is important to keep in mind in every instance, that CDIC insurance only covers \$100,000 of deposits, therefore any deposits over this amount at a bank are not CDIC insured (even in a bank account or GIC). In many reserve funds' situations, the issuing bank's creditworthiness is the safety net. We would suggest that within the confines of the Canadian banks' regulatory system, this is not a large step off the safe path.

These solutions generally range from 5-8 years in length, and like Market-Linked GICs are based on the performance of an underlying security, or basket of securities. The difference is that the positive performance of these solutions is generally not capped, and participates in 70% to over 100% of the performance of the underlying securities. In addition, these solutions are liquid daily, and may trade above or below par prior to maturity, depending on the performance of the underlying securities. Therefore if there is an unexpected need for funds, the corporation's money is not "locked in".

These solutions are very attractive as there is no limit to the potential return. However, they do carry the risk of earning a 0% return if the market is flat or negative at the time of maturity. For the portion of your reserve fund that you are highly unlikely to be in need of within 5-7 years, these can be a solid complement.

### Ways to Mitigate Risk of 0% Return

With a little bit of planning, a condo board can lock in a positive return, while allowing for uncapped positive participation in the equity markets. To do so, they would create an investment portfolio comprised of a blend of guaranteed investments, and market-linked solutions. All these solutions would be ladderized to mature at different times, so that every year there is money coming available. This way, even if the stock market is down at the time of maturity, the portfolio would still experience a gain (0% from structured solutions + income from GIC), and if the stock market did well, the portfolio could experience more substantial gains.

### More Work

This all may seem like a lot of work compared to parking the entire reserve fund in a 1 year GIC which renews annually. However, any percentage point increase benefits the entire condominium corporation. If the board decides just to stick with GICs, it is prudent to "shop around" as the bank often won't give their best rate if uncontested. The solutions eligible under the Condominium Act, 1998 generally do not carry any fees for the client. Therefore, there is no reason not to enlist the help of a professional.

### Final Thoughts

Rising maintenance costs, low interest rates, and in turn rising condo fees are a frustrating reality for most condominium owners, which have resulted in decreased property values and lawsuits. Although rising costs of goods and services, unexpected maintenance, and other costs cannot be controlled by the condominium board, they do have a fiduciary duty to ensure they take all appropriate measures to control the rise of condominium fees.

One way of doing so, which is in your control, is to place a greater emphasis on finding the optimal investment strategy for the reserve fund. Allowing hundreds of thousands, or millions of dollars to sit idly in a bank account, or GIC earning less than 1% is not optimal for unit owners. There are solutions which fit well within the spirit of the law surrounding eligible securities that offer the potential for meaningful gains, and should thus be explored.

A well-structured portfolio which corresponds with the anticipated cash flow needs

set forth in the reserve fund study, should provide the condominium corporation with the additional funds annually which could be used to offset increases in condo fees. This just requires condominium unit owners, and board members to make optimal reserve fund investing a priority, not an afterthought.

If you have any questions about reserve fund investing, or suggestions for future articles surrounding reserve fund investing, please contact the writer:

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*Disclaimer: The amount of interest payable under the Notes is uncertain. The prices of the Shares included in the Share Basket have experienced significant movements in the past and it is impossible to know their future direction. The Notes are not equivalent to a direct investment in the Share Basket. An investor cannot elect to receive the Principal Amount prior to maturity. The investor may, however, be able to sell the Notes in a secondary market, subject to availability, but in that event proceeds may be subject to an Early Trading Fee and may be less than the Principal Amount. The Notes do not constitute deposits insured under the Canada Deposit Insurance Corporation Act. Raymond James Ltd., Member – Canadian Investor Protection Fund. ■*





# Ottawa's Real Estate Market: Condominiums as Investments

*By Angela Augsbury  
Coldwell Banker Rhodes and Company*

Anyone living in one of Ottawa's core neighbourhoods would be hard pressed to ignore the increasing number of condominiums in their community. Gentrifying and established neighbourhoods alike are all seeing some measure of condo development. The record high number of condo apartment construction that began in 2012 still has no end in sight and building completions set for this year will continue to break Ottawa construction records. These new projects run the gamut from low-rise boutique buildings with ground floor retail to large branded urban communities, like Minto's Lansdowne Park and Windmill's Zibi. It seems as though developers are trying to offer endless options in a competitive marketplace to capture buyers.

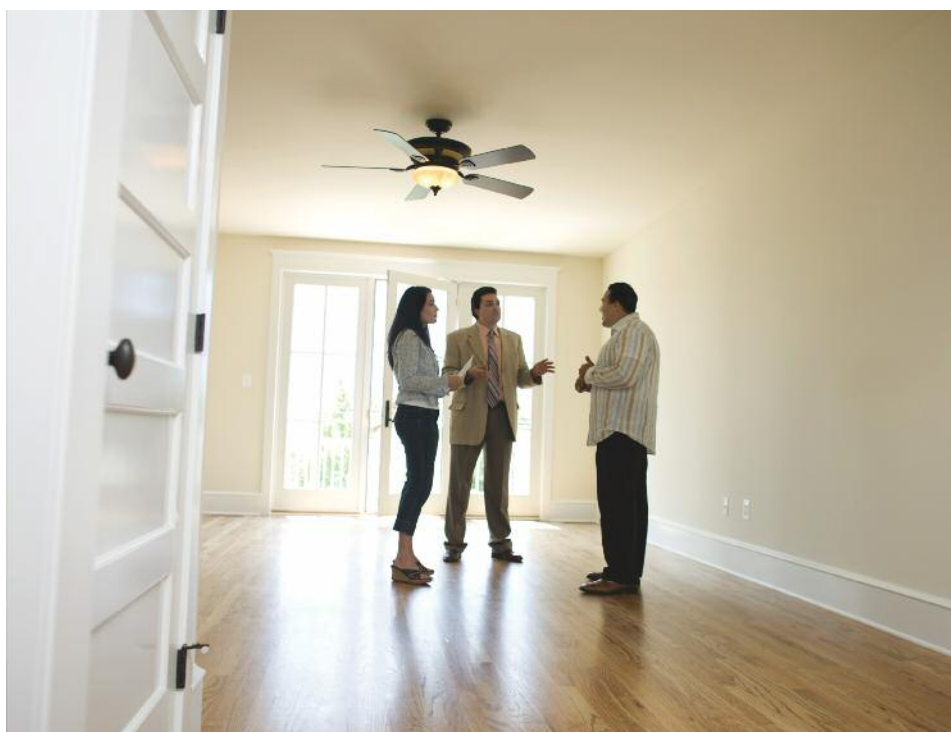
Due to the unprecedented construction activity of Ottawa condos, it comes as no surprise that the current re-sale market favours the buyer. Due to a high inventory of unsold new construction units and a steady stream of re-sale units entering the marketplace, private sellers and developers alike are having a harder time selling. Affordability of new condos also affects the market. In recent years, as freehold residential home ownership inside Ottawa's greenbelt has become increasingly more expensive, budget-conscious and first time buyers interested in core locations have looked to condos. In the recent condo boom, developers have attempted to capture the popular buyer age cohort of 25 – 44 with primarily smaller square footage units but with higher end finishes and in prime locations.

Unfortunately, this same age cohort has experienced weakened employment which, combined with high condominium pricing, has limited their purchasing power.

With the rapid growth in condos, the buyer pool has increasingly turned from owner occupiers to investors. Given the current low interest rates and down payments required for the initial investment of a condo unit, first time investors looking to enter into the real estate market routinely turned to condos. According to the Canadian Mortgage and Housing Corporation (CMHC) in their 2014 rental market report, privately held (in-

vestor) condo apartments that were offered for rent represented 24.2% of total condominium units. With the increased construction, it is predicted the percentage of units offered for rent may further increase.

The increase in supply has also increased the overall vacancy rate, which is the percentage of units unoccupied that are currently being actively marketed for rent. The average vacancy rate for apartments in the city of Ottawa was 2.6%; however, for the downtown core, where a significant number of new condo starts are under construction, the vacancy rate is notably higher at 3.3%.



For more seasoned real estate investors looking for a higher return on investment (ROI), condo units may not achieve their investment goals. Monthly condo fees and relatively high property taxes, combined with a competitive rental market, can make it virtually impossible for an investor to make the investment significantly “cash flow positive”. Often a higher down payment is required to reduce monthly debt servicing. For full time investors, a higher down payment devoted to one investment means there is less cash available for concurrent or future investment opportunities.

There may also be uncontrollable or unforeseen expenses that are associated with condo ownership versus single or multifamily residential ownership, which adds an additional element of risk. Condo fees, often quoted on the lower side by developers looking to sell new units, can double in the first year of ownership and continue to increase. Special assessments levied by the condo corporation for various reasons can also greatly affect an investor’s cash flow. These special assessments are not solely relegated to older condominium buildings that may be short on reserve funds for capital improvements. New condominium units are subject to the same risk. Corporations that have been poorly managed, suffered increased insurance premiums due to water damage or haven’t completed routine maintenance of building systems can all suffer costly special assessments.

Monthly condo fees and relatively high property taxes, combined with a competitive rental market, can make it virtually impossible for an investor to make the investment significantly “cash flow positive”.

Proponents of investment in condominiums, especially in the real estate industry, have lauded the benefits of purchasing newly built condo units as great investment vehicles. Marketed as a low maintenance and “turnkey”, the investment depends greatly on the appreciation of the resale value of the unit and not the cash flow of the rental income. In a seller’s market, where demand for condos

outpaces the available supply, a condo realizes appreciation. Unfortunately, this is not the case for Ottawa’s current condo market.

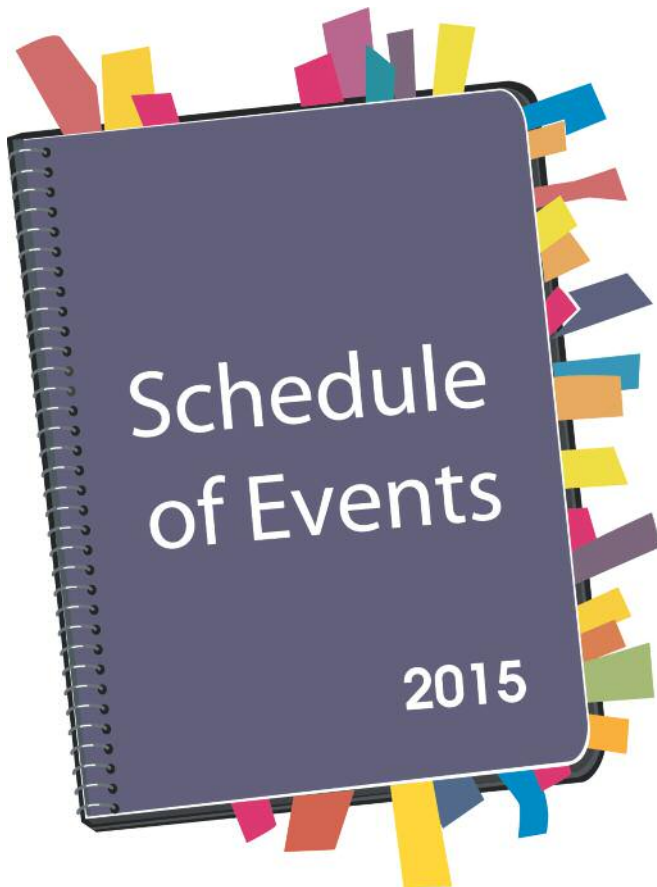
In this current buyer’s market, purchasing a condo as a first time investment may be an appropriate strategy for a full-time professional who is looking to enter into the market and willing to sacrifice ROI for the management conveniences of condo ownership. Similarly, a buyer who is looking to purchase a condo for the eventual goal of future occupancy may also appreciate building equity and the advantage of short-term tax benefits offered by a rental property. The future of the condominium market is still uncertain and it is likely that supply will continue to outpace demand. However, if predictions are accurate that the public sector employment will stabilize and Ottawa will see a higher than expected net migration, that is good news for condo sellers.

Ultimately, for a first-time or seasoned investor, there are many factors to consider in entering the real estate investment market. It is always best to obtain advice from a knowledgeable professional that can assess real estate goals and objectives.

*Angela Augsbury is a Real Estate Broker with Coldwell Banker Rhodes and Company. She has over a decade of experience in investment real estate. ■*



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