

WINTER 2014

CONDO CONTACT

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

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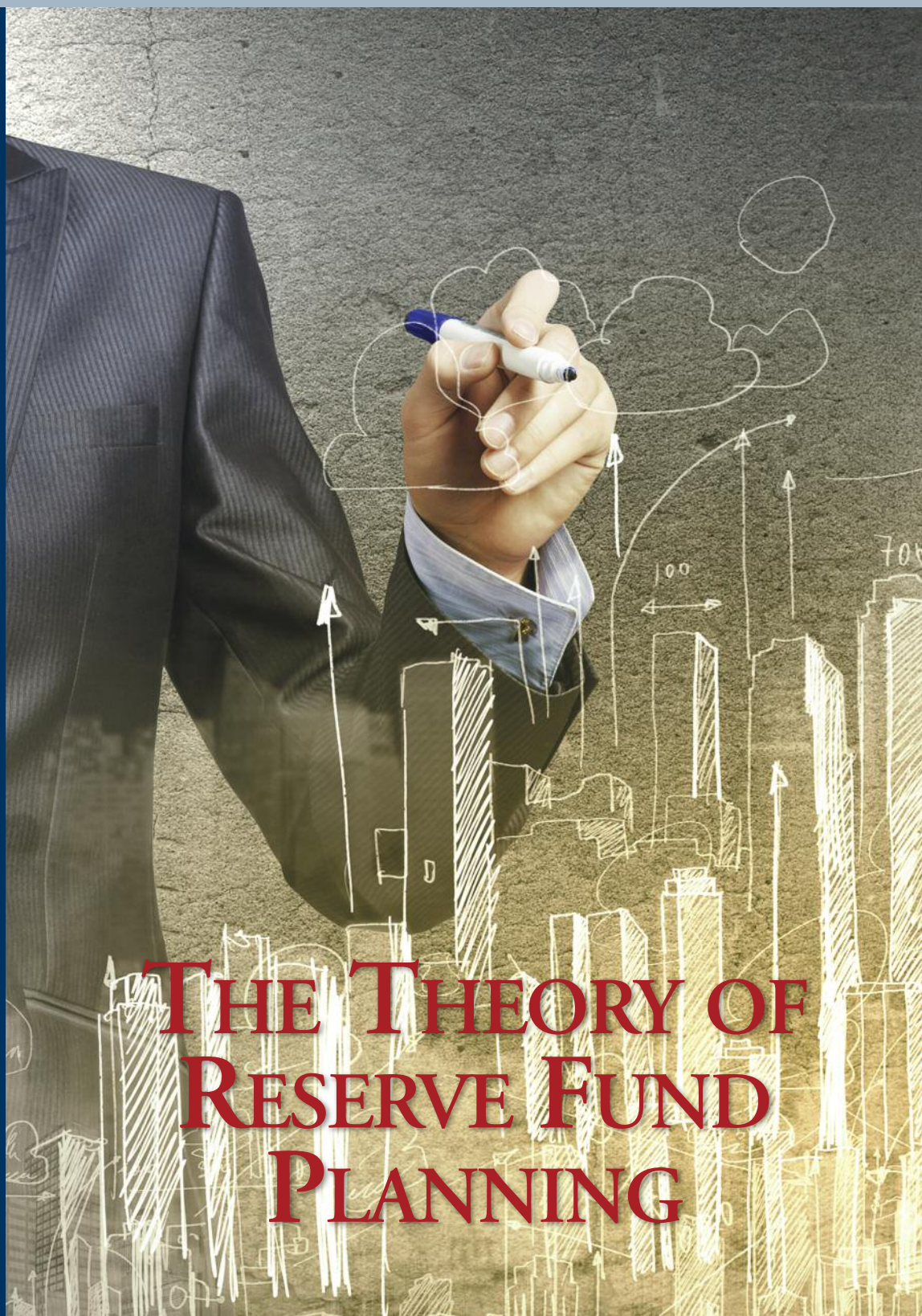
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The winter season is upon us, and it is the perfect time of year for the condominium community to be enjoying the benefits of condo living by sitting in front of a fire, enjoying an indoor swim while looking at the snow outside, skating on a canal just minutes from your suite, or perhaps enjoying the multitude of other activities and festivities in our capital city's winter wonderland.

At this time of year, we also take the opportunity to reflect on the past year, and look forward to

the next.

The Fall 2014 Condominium Directors' Course held on November 29 and 30, 2014 at the Hellenic Meeting and Reception Center, was a great success, and was, as usual, sold out. We encourage all members of the community who are interested in taking the course this coming Spring to register early to avoid disappointment. We were also recently involved in a joint ACMO/CCI Kingston Conference, which was held on November 28, 2014 at the Days Inn Hotel & Convention Centre. The event was well attended, with terrific speakers. We look forward to offering this event again next year.

This past year culminated in the recent Annual General Meeting (AGM), held on November 24, 2014 at the Nepean Sportsplex, following by a presentation by Stehanie Courneyea (McCay Duff) on 'How to Read Your Financial Statements'. It was terrific to see so many members of the Eastern Ontario condo community in attendance. It is your Board's objective to continue to offer a free seminar following each year's AGM, and we hope that this will continue to encourage more attendance at the AGM each year. Immediately following the AGM, your new Board met on December 4, 2014 to plan out the coming year. Look forward to more seminars and networking opportunities, as well as new content and forums on hot topics on the website.

Best wishes for the holiday and winter season!

Nancy Houle
President-CCI-Ottawa

CONDO CONTACT

CANADIAN CONDOMINIUM INSTITUTE OTTAWA & AREA CHAPTER

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

Telephone: 1-866-491-6216

Fax: 1-866-502-1670

E-mail: cciottawa@cci.ca

Website: www.cci.ca/Ottawa

Twitter: @CClinOttawa

Operations Manager

Carolyne Vigon
carolyne@associationconcepts.ca
Tel: (866) 491-6216 x 124
Fax: 1-866-502-1670

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Rod Escayola



Tim Kennedy

It is hard to believe that this is already our last edition of the year. And what a year it has been! We have jumped into cyber space with the revamping of our website (cci-ottawa.ca), with the launching of our twitter account (@CClinOttawa) and with the revival our LinkedIn page (CCI Ottawa). Follow us, tweet us, "like us"! We hope that you will join in the conversation!

Speaking of going digital, this is going to be our last paper-edition. The end of an era, undoubtedly but an increasing number of our membership has been asking us to go green. Leaving more trees in the forest is the least we can do. We hope you will continue to enjoy our magazine on your computer or your tablets. We hope to also publish our articles on our social media. ***To continue receiving our newsletter, it is paramount that we have your email address! Please send it in to cciottawa@cci.ca.***

The present edition focuses on financial matters. Proper management of your condominium financial affairs are at the very heart of what you do. We are pleased to present a collection of articles, which will shed light on various issues such as the first year deficit (and how to recover it); on your corporation's tax exemption status (and how not to jeopardize it by entering into profit-generating activities) and how to properly maintain your reserve fund. The reserve fund is greatly misunderstood by many. Jim Davidson gives us the theory behind it.

Of course, we also have our "Ask the Pros" section. It's up to you to ask the questions and up to us to find the answer. How great is that?!

As always, we invite you to send us your success stories. Have you retrofitted the lights in your garage? Have you had to change your windows? How did you last pass your most recent by-law? All of these accomplishments are worth talking about. Feel free to write to us to share these stories.

We take this opportunity to wish you, and your family, all of the best for the New Year!

*Tim Kennedy is a partner with the law firm Vincent Dagenais Gibson LLP/s.r.l.
Rod Escayola is a partner with the law firm Gowlings in Ottawa.*

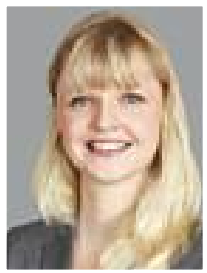
Contributing to CCI Condo Contact Editor's Contact Information

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.

ARTICLES MAY BE FORWARDED TO:

The Editor, *Condo Contact*
Canadian Condominium Institute
Ottawa & Area Chapter
P.O. Box 32001
1386 Richmond Road, Ottawa, ON K2B 1A1
OR Email: cciottawa@cci.ca



New CRA View on Whether Condominium Corporations are Exempt from Tax

By Nicole K. D'Aoust

On August 18, 2014, CRA issued a new document that deals with the tax implications of a leasing arrangement between a condo corporation (the "Corporation") and a company proposing to install solar panels on several rooftops of the condominium complex. CRA was asked to consider whether the leasing arrangement would cause the Corporation to fail to meet the test to be a "non-profit organization" pursuant to paragraph 149(1)(l) of the Income Tax Act (Canada) (the "Act").

Generally speaking, a condo corporation that meets the criteria in the definition of "non-profit organization" in the Act will be exempt from tax for the period of time during which it meets the criteria. To meet the criteria, a condo corporation must:

- be a club, society, or association;
- not be a charity;
- be organized and operated exclusively for social welfare, civic improvement, pleasure, recreation, or any other purpose except profit; and
- not make its income available for the personal benefit of a member or shareholder [...].

Based on these criteria, issues that could arise from the proposed solar panel leasing arrangement include whether the activity has a profit purpose and whether the surplus funds that are generated from the ac-

tivity are made available for the personal benefit of members of the Corporation. In past editions of our Charities and Not-for-Profit Newsletter [September 2013 and February 2012], our group has written about whether certain other revenue generating activities in which condo corporations often participate are evidence of a profit purpose, which will typically disqualify the particular corporation from being considered to be a non-profit organization for purposes of the Act. These are just some of the compliance issues that CRA has raised in the condo corporation context.

In this particular instance, only some of the terms of the agreement that the parties were proposing to enter into are described in the CRA document. As a result, it is impossible to say for certain whether the activity in question would cause the Corporation to fail to meet the test in the Act for a non-profit organization. However, CRA did express concern over the fact that the income from the leasing arrangement might be considered to be made available for the personal benefit of members of the Corporation since the parties to the agreement were contemplating that such amounts might be used to freeze increases in the annual reserve fund of the Corporation (which is used for the repair and replacement of capital components of common areas) and/or to offset unit owners' monthly maintenance fees. CRA was also concerned as to whether the leasing arrangement was sufficiently con-

nected to the Corporation's not-for-profit objectives.

When contemplating certain commercial activities, it may be helpful for condo corporations to consider these comments made by CRA, in addition to CRA's other published comments. These comments should also be a reminder that condo corporations must meet the test in paragraph 149(1)(l) of the Act in order to be exempt from income tax and that CRA will not consider them to be exempt from tax simply "because" they are condo corporations, to use the words of CRA.

Nicole K. D'Aoust is an Associate in the Toronto office of Miller Thomson's Charities and Not-for-Profit Group. Before joining the firm in August 2014, Nicole practiced in the areas of tax law and tax litigation and dispute resolution with a law firm affiliated with a "big four" public accounting firm. She also gained experience working for a not-for-profit professional association and articulated with a national law firm. At Miller Thomson, she is building a practice focused on providing taxation and corporate governance advice to charities and not-for-profit organizations.

Reprinted from Miller Thomson's "Charities and Not-for-Profit" Group Newsletter, November 2014. ■



Guarantees Against Condo Fee Increases Don't Last Forever

By Stephen Chesney

If you are thinking of purchasing a pre-construction condominium unit and have recently spoken to a sales representative, you might have been told that the monthly maintenance fees are guaranteed.

This fact is true but there are some important additional facts that you need should know in consideration of that purchase.

The Condominium Act of Ontario does give protection to purchasers of a new condominium unit, but that guarantee is not forever.

In fact, the fees that you are quoted are only guaranteed for the first year of the condominium's existence. In other words when budgeting your monthly carrying costs (mortgage payments, taxes and condominium fees), you can only be assured that the condo fees will be stable for the first year after the registration.

When a brand new condominium is built, the builder must include a first year budget as part of the disclosure to the potential purchasers.

This budget includes the anticipated costs to operate the corporation for the first year after registration. Often this budget is done years before construction has actually started. This is the same budget that is used to calculate the condominium fees for each



unit based on the ownership percentage in the corporation's declaration.

Therefore the Condominium Act of Ontario mandates that if the builder's budget is not sufficient and the condominium corporation has to spend more on operations in its first year, the builder must repay that

"deficit" to the condominium.

In essence after repayment the owners would be returned to break even at the end of year one. However what happens in year two and every other year thereafter?

In each subsequent year any deficit is borne

by the owners as the builder is no longer responsible. So if there was a deficit in year one, the board of directors will likely have to increase the monthly maintenance fees to account for the higher than anticipated costs to operate the building.

Over the years I have seen modest increases however I have also seen very large increases of 20 or 30 percent in year two and sometimes even larger than that. How many individuals in this economy could afford an unbudgeted increase of that nature when buying a new home?

There are many reasons that a condominium can have a first year deficit and quite often it is due to utilities being over budget.

It is very hard to predict the cost of gas, hydro and water before a building is completed. Utility rates often increase without much notice and the budget may have been prepared many years before completion of the building.

As well, there are often other expenses such as service contracts that do not exist in the first year due to manufacturer warranties however they have to be included in the second year budget that is prepared by the new board of directors.

'Seek as much advice as you can so that you are not faced with a potentially significant increase in your monthly fees if the first year budget proves to be insufficient.'

So what you can do about this potential issue is do your homework. While you are choosing a new condominium unit to purchase, do some investigating into the builder's past experience with budgeting for new condominium buildings.

Ask if the builder has completed previous buildings and inquire into how accurate their first year budget was. Does this builder use an experienced management company or other consultant to help prepare the budget?

You can also ask someone who has experi-

ence in the condominium industry to have a look at the budget for their opinion on the accuracy of the budget. You can also compare the budgeted condominium fees for your new unit against other condo fees in the area, but this can be tricky as you have to choose another building with similar amenities, age and size of unit.

Educate yourself as much as possible before making the commitment. Seek as much advice as you can so that you are not faced with a potentially significant increase in your monthly fees if the first year budget proves to be insufficient. This would turn out to be a very unfortunate surprise!

In my next article I will discuss how reserve fund requirements are causing large increases in monthly condominium fees in Ontario today.

Stephen Chestney is a chartered accountant and a partner in the firm Parker Garber & Chestney Chartered Accountants and is a specialist in the field of condominiums.

The firm acts as auditors for more than 350 condominium corporations in Ontario.

Reprinted from *The Toronto Sun, Condo Living Section*, Friday, March 8 & Sunday, March 10, 2013. ■

CCI-Ottawa Welcomes 2015!

CCI-Ottawa hopes everyone has enjoyed the Holiday Season. As we wrap up the 2014 year, CCI-Ottawa is in full swing hosting monthly seminars, educational courses, newsletters and conferences. Be sure not to miss out on the buzz by ensuring CCI-Ottawa can reach you. Contact the chapter either via e-mail cciottawa@cci.ca or by phone **1-866-491-6216** to ensure you're kept in the loop. We look forward to hearing from you!



The Theory of Reserve Fund Planning

By Jim Davidson

James (Jim) Davidson is a partner at Nelligan O'Brien Payne, and has been a member of the firm's Condominium Law Practice Group for over 30 years. He represents condominium corporations, their directors, owners, and insurers throughout Eastern Ontario. He can be reached at james.davidson@nelligan.ca or 613-231-8243.

Some of the biggest complaints I hear from condominium owners are: “*Why didn't we properly plan for this expense?*” and “*Why didn't we make larger contributions to the reserve fund in the past?*”

This strikes right to the heart of what condominium reserve fund planning is all about. In fact, the 2001 Amendments to the *Condominium Act* were, in part, designed to avoid or minimize these sorts of complaints – by making reserve fund studies mandatory, and by introducing prescribed requirements for those studies. The whole idea was to try to minimize repair and replacement “surprises”.

Some surprises are of course unavoidable. Reserve fund analysts can only predict future repairs and replacements based upon information available at the time of each reserve fund study – and the information is never 100% reliable. Conditions are sometimes hidden, and circumstances can sometimes change. Predictions are only a “best

guess”, based upon the available information.

At the same time, I think that certain principles, if followed, can hopefully minimize complaints of the sorts noted above.

In my view, the theory of reserve fund planning is to arrive at reserve fund contributions that can remain constant (increasing only by inflation) from year to year. If this principle is met, subject to unexpected information or changes in circumstances as described above, then:

- the cost of the corporation's long-term repair and replacements would be at “equilibrium”, so that future owners won't pay more than current owners;
- special assessments and increases (beyond inflation) would be avoided;
- there would be no need to refer to the reserve fund contributions in status certificates, because the contributions would not represent a risk of an increase in common expenses.

Again, I think that's the goal or theory of reserve fund planning. And, in my view, that's when a reserve fund is “adequate” for purposes of the *Condominium Act*. [NOTE: For corporations declared prior to May 5, 2001, there is a 15-year “grace period”; beginning from the date of the corporation's first reserve fund study after May 5, 2001; to reach this state of “adequacy”.]

As I have said, this still doesn't guarantee that special assessments and increases (beyond inflation) won't occur – because conditions can be hidden and circumstances can change. But applying the above theory should at least minimize these surprises.

There is another consideration:

According to the *Condominium Act*, each reserve fund study must plan for all major repairs and replacements over at least a 30-year period.

The problem with this is as follows: ***What if there are common element features, or assets, that won't require repair or replacement until after the 30-year study period?***

Depending upon the methodology of the reserve fund analyst, those features may not be included in the 30-year study, and accordingly might not be included in the analysis of the required funding contributions. So, the planning theory, mentioned above, won't apply to any such features that



are “not part of the study”.

In summary, there might be features that are not part of the corporation’s reserve fund plan because those features won’t require repair or replacement until after the 30-year study period.

As a result:

1. It is important to understand the methodology used by your reserve fund analyst to arrive at the required funding contributions for your particular study. [What features, if any, have been left out of the analysis?]

2. Some reserve fund analysts, and some condominium corporations, may prefer a longer study period (say, 40 years or more) for their reserve fund studies – in order to cover additional features.
3. In any event, condominium corporations may need to include a warning, in paragraph 12 of their status certificates, if there are features of the common elements or assets that won’t require repair or replacement until after the period covered by the corporation’s reserve fund study (whether the period is 30 years, 40 years, or more), and which have not otherwise been included as part of the analysis for the required funding contributions. This is because contributions to the reserve fund might need to increase (beyond inflation) when those repairs or replacements do ultimately fall within the study. ■

CCI Education Videos - Have Now Arrived!

We are pleased to present **CCI – Your Condo Connection**, a 12 episode video series touching upon an array of topics of interest for those involved in – or thinking about becoming involved in – condominium communities.

Our 12 part video series “CCI – Your Condo Connection” premiered October 7th and a new video will be released each week.

Please visit CCI-Ottawa website under **“Resources”** to view the videos!



CRIMES IN CONDOS

Fraud Protection for Your Condominium Corporation

Learn how to take precautions against fraud with strong internal controls.

By Park Thompson, CA, ACCI

Note from the Editors:

You may have heard of a \$20M fraud which affected thousands of condominium owners across the Toronto area in 2011.

These corporations are still struggling with the aftermath, while the industry is attempting to understand how this could have happened.

It is alleged that this fraud involved a property manager "borrowing" millions of dollars against at least five buildings without their knowledge. It is important for condominium corporations to put in place strong internal controls to avoid this kind and other fraudulent conduct. This article from Park Thompson is a great reminder of the various precautions that can be put in place to minimize the risk of fraud.

Rod Escayola

With the computerization of business, there has been a large increase in the number of losses due to fraud or, to put it nicely, "white collar crime." The condominium industry is no different, suffering its share of losses.

This article will deal with some examples of fraud and steps that a condominium corporation should take to protect itself from such losses, namely, a strong system of internal control.

Prior to discussing internal control, it would be useful to review the responsibilities and objectives of management (property management and the board of directors) and the auditor briefly.

- **Management's responsibility** is to safeguard the corporation's assets from waste, inefficiency and fraud, and to prepare financial statements that properly reflect operations and financial position.
- **The auditor's objective** in conducting an examination of the financial statements is to express an opinion as to their fairness. The audit procedures should normally ensure the discovery of any errors or irregularities that would have a significant or material effect on the financial statements. The examination cannot provide absolute assurance that there are no significant irregularities because even

the most complex system of controls and auditing can be circumvented by collusion, for example, a kickback from a contractor to a board member. It has often been said that auditors are "watchdogs not bloodhounds."

Fraud and Human Nature

Several years ago I attended a seminar where some very interesting comments were made by a forensic auditor about the "face" of fraud. Statistics were given that spoke to the mindset of the general population. It said that:

- 25% of people were good all the time and would never commit a fraud.
- Another 25% of us were rotten and would cheat and steal at every opportunity.
- The most amazing number was that a full 50% were undecided and could fall on either side of the fence depending on the situation.

Potentially then, three out of four people or 75% could be bad apples.

Some examples:

Over the years I have been involved in the investigation of several frauds within condominium corporations. Some examples will illustrate the absolute necessity of a diligent board and a strong system of internal control:

- The corporation's bank term deposits were registered under the name of the property manager instead of the corporation. The property manager needed money, cashed them and left town resulting in an average special assessment of \$700 per unit to cover the loss.
- The corporation allowed its property manager to "invest" its reserve funds over a number of years. It was subsequently determined that the funds had been stolen and a special assessment resulted.
- A board member of a condominium that required only one cheque signer billed the corporation for non-existent or unnecessary mechanical repairs. The cheque signer was either complacent or not paying attention.
- We discovered two situations when a corporation's guest suite income did not get fully deposited to their bank accounts. In the first incident, the administrator was taking cash and was charged and convicted of theft. The second example was similar but since the paper trail was less complete, charges were not laid. Both situations could have been prevented if a closer eye had been kept on monthly revenues.
- The head concierge of a condominium, who was in charge of extra security duty for overtime and the party room, padded the hours of a guard. He was caught when a comparison of security costs and party room usage was made.
- Several interesting situations occurred in a large self-managed corporation. While it was never proven since charges were thrown out on a charter matter, there were allegations that the property manager was receiving a kickback that was extorted from a contractor. We established that several contractors operating under different names had the same address and telephone numbers, which may have artificially inflated the price quoted on repair jobs. Receipts submitted for reimbursement were described as being for "condominium type" expenses when,

in fact, they were for personal consumption.

- A small and simple fraud occurred in a corporation when maintenance staff charged cigarette purchases on the gas credit card claiming that it was for oil purchases. The property manager became suspicious at the apparent high oil use.

Internal Control

As previously noted, it is the responsibility of the board of directors to ensure that a good system of internal control is in place – to safeguard assets and produce accurate financial statements.

A general maxim of internal control is that one person should not handle all phases of a transaction from beginning to end; for example, review tenders, approve the contract, approve payment, sign cheques and record the transaction in the books. That is, a person should not be able to commit an error or fraud and then conceal it. The hardest part of a fraud is its concealment.

Having stated that the separation of duties within a corporation is of utmost importance, one inherent limitation of internal control is cost; it is simply too expensive for a small corporation to have different employees performing these separate duties. The effectiveness of a good system of internal control is also limited by human error and collusion. Perhaps the most critical factor in a condominium's system of internal control is having a diligent board of directors that does not believe in simply "rubber stamping" its financial transactions. For example, it should carry out an in depth review of the monthly financial statements and carefully scrutinize supporting documentation before signing cheques.

The board should also have an established set of conflict of interest guidelines.

Quotations and Tenders

If I was asked for one area that I think should be and could be easily strengthened,

it would be the quotation and tendering process.

Without question, a sealed or blind tendering process should be policy for large expenditures. This entails receiving sealed tenders by a particular time and date, which are then simultaneously opened by the board. For example, in a garage project, an engineer would be engaged to create specifications, qualify bidders and subsequently analyze tenders received after being opened by the board. This helps to prevent kickbacks or secret commissions. As a result, the corporation is assured of getting the best price and quality, and the board and property management fulfill their responsibility of due diligence. The transparency of the process enhances credibility.

The expression "perception is reality" has become popular, meaning that it doesn't matter what the actual facts of a situation may be, it's how it looks to an outside observer. With more openness and clarity there is less room for rumour and innuendo.

As for a policy on size, I have a large, self-managed condominium client that uses a sealed tender for all work greater than \$5,000. Most situations I see would be in the \$25,000 range.

The industry standard of obtaining three quotes minimum for board review should be followed for most other sizable jobs. Let me describe some examples when perception or appearance in several situations upset unit owners:

- The child of a highly respected board member supplied the corporation with a small piece of a large redecoration project. A huge uproar followed and the member sold his unit and moved from the building.
- A board member did work for the corporation and, after a requisitioned meeting and a costly investigation, was voted from office.

- A property manager's parent did some repair work for the corporation, which caused a stir at the annual meeting. Unknown to the board, a property manager's ex-spouse did repair work for the corporation. The manager was terminated for a number of reasons.
- A board member was voted from office when it became known that his wife was supplying services to the corporation.
- A property manager was fired for having a contractor added to the tender list that was being managed by the engineer project manager.

Sections 40 and 41 of the Condominium Act and its regulations 16(4), and (5), discuss conflict of interest situations and the steps that must be followed. Some corporations also have a clause in their declaration or bylaws that sets out procedures that must be taken.

The following is a quick checklist of some additional internal controls.

Cash

- A monthly bank reconciliation should be prepared, preferably by a person who does not sign cheques, with a subsequent review by a board member.
- Petty cash should be kept to a minimum.
- The number of bank accounts in use should be limited to two in most cases: operating and reserve fund.
- Two signatures should be required on all cheques (which should be prenumbered), preferably one board member and the property management.
- Blank cheques should never be signed nor should cheques be made out to "cash."
- The receipt of assessments and other amounts in cash should be discouraged.
- Signing authorities must be updated with each change in the board.

Investments

- Always made in the name of the corporation and all transactions done in writing; copies of receipts/certificates maintained.

- A detailed list should be a part of the monthly financial statements.
- Interest earned should be reconciled monthly.
- For investments that are not government backed, the \$60,000 deposit insurance limit should be recognized.
- Invest only in safe vehicles in accordance with the Condominium Act, declaration and bylaws.
- The use of an "investment advisor/broker" provides another level of control with the added benefit of professional advice.

Common Element Assessment

- A monthly aged report of owners' assessments receivable should be prepared for board review.
- Arrears should be minimal and when necessary a lien should be applied per the board's policy and the Condominium Act.

Other Assets

- Maintain a register of all substantial assets owned by the corporation including location.
- All items should be counted periodically.

Expenses

- Pre-numbered purchase orders should be used to authorize all purchases over a predetermined amount, authorized by a director when over a predetermined limit.
- Cheques should not be signed for any expenditures unless proper supporting documentation exists. After payment, invoices should be cancelled by noting the date of payment, cheque number, account coding, etc.
- Wages for all corporation personnel should be approved by the board of directors and included in minutes.

Revenues

- Assessments and other recurring sources of revenue, such as parking or rentals, should be reconciled to the budget or contracts.
- A register of prenumbered receipts and rental agreements should be maintained for revenues, such as party room and guest suite rentals, which could then be

reconciled to the income recorded in the books.

- Cash from laundry room machines should be collected and counted by two persons.

Financial Statements

- Should be prepared on a monthly basis and compared to budget, which will allow the board to identify unfavourable variances, trends and unusual expenditures.
- Many statement packages contain the detailed general ledger account transactions that allow a review of the month's and year-to-date balances including adjusting entries made.

Fidelity Bonds

- The board should ensure that property management is bonded up to the amount of funds handled.
- All board members and corporation employees should also be bonded because director's and officer's insurance does not cover fraud.

Minutes

- There is a debate about the amount of detail that should be contained in board meeting minutes.
- Minutes provide a historical record of decisions made and proof that the board has met its responsibilities. It is important that sufficient detail is written. For example, the names of contractors who quoted on a job and their pricing should be noted along with the board's decision.

Park Thompson has been a regular speaker at condominium courses and conferences and author of numerous articles on condominium matters over the past 18 years. He has served for many years as a member of the Boards of Directors of the Canadian Condominium Institute and of its Toronto Chapter, and has earned the designation ACCI (Associate of the Canadian Condominium Institute). His firm represents approximately 150 condominiums in the GTA. ■



Message from the President

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

I Told A Friend

Just the other day, a good friend of mine asked me what was new in my life. Inevitably, the topic turned to my time spent volunteering for CCI, because that is where the passion in my life contribution comes from. Suddenly I became animated, and my voice level raised and I started to talk faster, and the information about CCI started to flow from my lips like water over the falls. He started to laugh at me, and told me that my Movember moustache really dances around when I am like that, and we had a good laugh at my expense. A couple of days after that, my phone rang, and my friend said, "So how do I get involved in CCI?", and a little light went on in my otherwise dark head. My discussion had recruited another person who wanted to be passionate about something worthwhile, where they could make a difference in the world, and in themselves.

Then I remembered a very similar discussion some fifteen years ago between myself and Bob Gardiner, a Toronto lawyer, industry leader and CCI supporter, who was President of the Toronto Chapter at the time. I was the one who was jealous of his passion and his commitment, and his ability to help shape the world in positive ways. Bob had excited me, converted me and recruited me in one passionate conversation. He closed the conversation by saying "CCI needs people like you to give them the wisdom and the guidance to make Condominiums better."

It was a turning point in my life that I will never regret, and I will always remember like it was yesterday. Since that time I have dedicated thousands of hours to helping CCI get their job done, and will forever be in CCI's debt for believing in me and giving me this opportunity.

I have attended many CCI sessions over the years since then, and will be the first to admit that I take away more than I give at each and every one of them. Our Leaders' Forums have become such inspiring, supportive networking and learning events that my head spins for weeks after trying to figure out how I can incorporate all of those pearls of wisdom that are shared so freely from Chapter to Chapter and person to person. I know that I do not have the time to make every one happen because there are only twenty four hours in the day, unless I work overtime! I know that we need help to reach out to the wave of new condominium Owners and Boards that are at our doors. I also know that there is a solution.

As your newly elected President, I would like to thank you for this opportunity to lead such a wonderful group of people, collectively known as the Canadian Condominium Institute. I will do my best to help support your efforts in any way that I can. I will be working with a talented, passionate Executive to find and create successes to celebrate over the next two years. Together, we can accomplish exponentially more than we can apart. Let me put

out a personal challenge to every one of our members. It is simple, and you probably won't even know that you are doing it when you do, but doing it will get us the resources that we need to meet the growing challenge of this marketplace. My challenge is for each member to simply tell a friend about CCI. Close that conversation by asking them to help us. Ask them to join in what you so strongly believe in. Let's watch our passion double in a single conversation.

Season's Greetings

The CCI Executive Board, National Council, and staff wish to extend warm holiday wishes to all CCI members, Associates and Friends.

Kindly note that the CCI National Office will be closed for the Holidays, Wednesday, December 24th. The office will re-open on Monday, January 5, 2015.

Condo Cases Across Canada

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



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

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

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

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

THE HOT TOPIC – Ontario developer places limits upon its potential liability

A recent Ontario decision deals with a novel procedure by which a developer was able to place limits upon its potential liability. Here's my summary of the case.

Toronto Standard Condominium Corporation No. 2095 v. West Harbour City (I) Residences Corp. (Ontario Court of Appeal) October 22, 2014

Appeal dismissed. Agreement to limit developer's liability, entered into by developer-controlled Board, found binding and enforceable.

At a time when the condominium Board was controlled by the developer, the condominium corporation passed a by-law which authorized the condominium corporation to enter into an agreement with the developer, stating that the developer's liability to the condominium corporation (for building defects) was limited to the developer's obligations under the *Ontario New Home Warranties Plan Act*. The condominium corporation then entered into the agreement.

After the developer was no longer in control of the condominium corporation, the corporation applied for a declaration that the by-law and agreement were void and of no force and effect. The condominium corporation was not successful at the lower Court. [See Condo Cases Across

Canada, Part 44, November 2013.]

The condominium corporation appealed the decision to the Court of Appeal, and the appeal was dismissed. The Court of Appeal said:

The by-law and agreement were disclosed to the individual unit purchasers and that the by-law was placed on title giving notice to the world of its terms. In these circumstances, I see no basis for finding that in passing the by-law and entering into the warranty agreement the directors acted in violation of their duties or for concluding that the by-law was ultra vires.

...

The consideration for the warranty agreement is to be found in the creation of the condominium project as a whole. The unit owners, as a group, own all of the common elements and their purchase from the declarant includes both the purchase of their respective units and, in the aggregate, the purchase of the common elements. . .

...

There is nothing inherently unreasonable in a declarant limiting its liability for construction deficiencies in the manner done here.

[Editorial Note – it seems to me that this decision may still leave some unanswered questions:

- 1. Is the decision confined only to warranty claims – not to tort claims? The first paragraph of the decision refers very specifically to limits upon the declarant's warranties.*
- 2. Along the same lines, is this decision only intended to apply to deficiencies that are covered by the Tarion warranties (ie, warranties under the Ontario New Home Warranties Plan Act)?*
The decision includes the following sentences: "There is no suggestion that, when it entered into the agreement, the declarant knew of any deficiencies that would not be covered by the Tarion Warranty Corporation process. All of the construction deficiencies identified to date are being addressed within that process." So, again, is this decision only saying that the condominium corporation is obligated to pursue the Tarion claims process (as opposed to a Court process) when the Tarion claims process applies or is available in relation to a particular defect?
- 3. Does the decision also apply to tort claims (for instance, claims for negligent design, inspection or construction) derived from the rights of subsequent purchasers?*
- 4. Would such an agreement (between a declarant and a condominium corporation) prevent the corporation from asserting claims against others involved in the original construction, such as engineers, architects, the municipality, contractors or the builder?]*

continued...

Condo Cases Across Canada Cont'd.

BC Case – **Strata Corp. LMS3442 v. Storozuk (British Columbia Supreme Court) August 11, 2014**

Owner entitled to exemption from “no renting” by-law

The strata corporation's by-laws included a by-law prohibiting owners from renting their strata lots. Pursuant to Section 144 of the Strata Property Act, one of the owners sought the Strata Council's consent to allow him to rent his strata lot (ie. for exemption from the by-law), due to his financial hardship. The owner went ahead and rented the strata lot before the Strata Council gave consent. As a result of this breach of the by-laws, the Strata Council decided to impose fines on the owner. However, the Strata Council also held a hearing to consider the owner's application for exemption from the by-law; and declined to grant the requested exemption.

The owner refused to pay the fines and the strata corporation started this Court proceeding for recovery of the fines.

The Court held that the owner was entitled to the requested exemption from the by-law, because the strata corporation had failed to meet the technical requirement, in Section 144 of the Strata Property Act, that its decision be provided to the owner, in writing, within one week after the “exemption hearing”. The Court said:

While the strict interpretation of the statute seems unjust given that Mr. Storozuk knew the result from the oral decision, received the written decision only one day late, rented his condo without following the proper procedure himself, and likely acted in bad faith by attempting to mislead the (strata corporation) by stating that the tenants were “renting to own”, I find that I am bound to apply the statute. The statute specifically states that an exemption is allowed if the strata corporation does not give its decision in writing within one week after a hearing is held.

The strata corporation's claim for recovery of the fines was dismissed.

Alberta Case – **Condominium Plan No. 762 1302 v. Stebbing (Alberta Court of Queen's Bench) August 11, 2014**

Pet violates by-law, but removal stayed until pet either dies or is relocated

The condominium by-laws permitted pets with written consent of the Board. The Board had traditionally provided consent, upon request, and there were a number of pets in the building.

The by-laws also provided for removal of any pet deemed to be a nuisance.

One of the owners had two cats, and she had failed to request or obtain consent for the cats. The corporation demanded that the cats be removed – due to the lack of consent (not because the cats had caused any sort of problem). The owner refused to remove the cats. [By the time of the Court Hearing, only one cat remained.] The Court said that the Board had a duty “to act fairly in making a decision that affects the ‘rights, privileges or interests’ of an owner”. The Court considered the principles of oppression contained in Section 67 of the *Condominium Property Act*, and the competing interests of the pet owner and the other residents in the building (including some with allergies to cats) and declared that the pet owner was in breach of the by-law (for the lack of written consent). However, the Court ordered that the enforcement of the by-law be stayed or delayed until the cat either died of natural causes or was relocated.

Quebec Case – **Bouchard v. Syndicat des Copropriétaires le Val-Des-Arbres (Quebec Small Claims Court) (September 8, 2014)**

Board did not have knowledge of increase when information released to Plaintiff. Plaintiff not entitled to avoid special assessment

On June 21, 2012, in response to a request from the Plaintiff purchaser, the Syndicat issued a letter to the Plaintiff's notary stating that there were no anticipated special assessments. In July and August of 2012, the Directors for the Syndicat met to discuss the current expenses, and the preparation of a five year plan to allow for completion of certain required maintenance on the property, with a view to providing a detailed plan to the owners, as well as notice of whether a special assessment may be required to complete the work. In November of 2012, the plan was presented to the owners, at a meeting, for discussion and approval. At the meeting, the owners approved the plan and the special assessment.

At the trial, the Plaintiff argued that the Committee should have known that work was required, in June, when the letter was issued, and accordingly purposely withheld the information. The Court found that the Plaintiff had not discharged her burden of proof, and that there was insufficient evidence to provide that the Committee had knowledge of a need for a special assessment at the time that the letter was issued. The case against the Syndicat was dismissed, with costs against the Plaintiff. 🍁

continued...



CCI Fall Leaders' Forum, Annual General Meeting and Awards

This year, the Fall Leaders' Forum and National Annual General Meeting featured a new format and a new downtown Toronto location, both of which were welcomed by participants. The CCI National Council and over 55 Chapter delegates attended and participated in the opportunity for our 16 Chapters to share their ideas, highlight their successes, and learn from the Committee and Chapter presentations. The AGM allowed us to recognize three individuals as Fellows of the CCI (FCCI) and congratulate the winners of the H. Penman Smith Chapter Newsletter of the Year Award and the Lorne Young Chapter of the Year Award. Congratulations to all our recipients and Chapter winners, and thank you for your outstanding contributions to CCI's continued success!



CCI National President, Geoff Penney, giving his report to the members at the AGM.



National AGM Attendees



Leaders' Forum Workshop



Geoff Penney, presenting the gavel plaque to outgoing CCI National Chair, Jim MacKenzie



Leaders' Forum Workshop



Carol Burke receiving her 5 Year Award for her tenure on the CCI National Council.

CCI Fall 2014 Leaders' Forum and AGM Cont'd.



FCCI Recipient, Maria Bartolotti, receiving her plaque from CCI South Alberta Council Rep, Andrew Fulcher



Karen Reynolds, Golden Horseshoe Chapter President, presenting the FCCI plaque to Maria Finoro



Brian Horlick, CCI Toronto President, presenting the FCCI plaque to Park Thompson

Congratulations to H. Penman Smith Chapter Newsletter of the Year Winners



Tier 1 – CCI South Saskatchewan Chapter



Tier 2 – CCI North Alberta Chapter

Congratulations to This Year's Lorne Young Chapter of the Year Winners



Tier 1 – CCI South Alberta Chapter



Tier 2 – CCI Golden Horseshoe Chapter

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CHAPTER CHATTER



London & Area Chapter – The 2014-2015 year is more than well on its way and the London and Area Chapter has had some changes. I am the new Administrator for our chapter. With our Annual General Meeting in September we said our good-byes to condo veteran and long time Board Member Kay Stallard. We are delighted to have our President Michael Lander and our Secretary Kevin Dietrich return for another term on the Board with us. Trish Kaplan has opted to give up her role as Treasurer on the Board but remain as a member and active chairperson on several committees. Thank you to all of our Board Members for continually offering their time and expertise to our CCI Community.

London's first CCI "Condo of the Year" was awarded to MCC 257.

Our annual golf tournament was again a great success this year. Held at Pine Knot Golf & Country club a good time was had by all participants. It was a well sponsored event and gave us an opportunity to raise some funds. The fundraising committee is possibly looking into combining a silent auction night with the golf tournament next year making it an even bigger event.

The London and Area Chapter annual Condominium Course on November 1st and November 8th was another huge success. The facilitators were top-notch professionals from our very own condo community. They were able to share their expertise and offer an abundance of personal knowledge to our 65 participants. We must thank Barry Scott, Susan Size, Bart Porter, April Pittenbreigh, Michael Lander, Kim DeVries, Joe Hoffer, Robin Whimster, Ian Low, Beth Newbould, Jeffrey

Bell and Trish Kaplan for their generous contribution of time, effort and know-how. With the fantastic education, great venue and awesome food... it was an event not to be missed.

Our Education Committee continues to prepare for the upcoming year of enlightening and teaching. November 18th Michelle Kelly and Stephanie Sutherland from Sutherland Kelly LLP law firm will be speaking on "It all comes back to the DOCUMENTS"... a seminar stressing the importance of not only knowing the contents of our condominiums documents but how to enforce them as well. Seminars will be held on January 20th and March 24th. And of course our annual seminar "There are no Stupid Questions" will be on May 26th.

We started off to a bit of a slow start but members, both new and old, continue to register for their 2014-2015 memberships. Promoting condo living through our consistent education opportunities is a great way to encourage membership and we will continue to do so, hoping to continually increase our community numbers.

This has been a very busy season and we all look very much forward to the next.

*Debbie Kramers, Administrator
CCI London and Area Chapter*



Nova Scotia Chapter – The Chapter held our first Conference and Trade Show in June at Mount Saint Vincent University. It was a great success: attendees turned out in good numbers and our Professional and Business Partner Members had the Trade Show bristling with booths and

displays. Lots of networking and a bonus: we had four registrants from Prince Edward Island. Our second Conference and Trade Show is scheduled for May 2015 and we're getting interest already. Our 2014-15 year started with our AGM in September featuring a "No Stupid Questions" panel along with Chapter business and election of Directors. We had a good turnout in November for CM100 and were especially pleased to have good representation from members outside of the Halifax area. It's going to be a busy year.

Membership has continued to grow partly because of an effective Complimentary Membership program. Prospective members who join during the first six months of the calendar year get a membership through to the end of the next fiscal year. This has proven of interest to new members and the retention rate has been quite high.

Current issues of concern to our members include property taxation, conversion to smoke-free condos, construction and maintenance issues, and how to run a good Board of Directors meeting. Communicating with our members is an issue: we are wrestling with how to use social media to boost CCI profile and advocacy efforts. We're also examining whether traditional communications -- regular mail and e-mail -- are more effective, especially in efforts to reach individual owners as well as the directors of condo corporations.

We continue to support the New Brunswick Chapter through sharing of our Newsletter. CCI-NB is now a full-fledged independent member of the CCI family and is making its own mark on the condominium sector in NB. Our PEI member is spearheading an initiative to see a new Condominium Act for PEI and both the NS and NB Chapters have offered to help. The number of condos in PEI is not large but future co-operation and support will help both the owners and the industry.

*Rod Ziegler, Newsletter Editor
CCI Nova Scotia Chapter*

continued...

Chapter Chatter Cont'd.



South Alberta Chapter – Our team at the board level is very pro-active and we have developed some strong committees to focus on education, awards, government issues, communication at a national level, memberships and conferences. Each committee is working on some great initiatives right now that I would like to highlight. Our Conference Committee successfully delivered the 2nd Annual CCI – ACMA – REIC Building Stronger Relationships Conference and Tradeshow on September 11 - 12, 2014. With 181 attendees and exhibitors, the conference was full of educational seminars, networking, and a legal panel. It featured Cassie Campbell-Pascall from Hockey Night in Canada as the keynote speaker. We are looking forward to the 3rd annual conference in 2015.

Our Awards & Recognition Committee did a superb job with the Condo of the Year Award. A lot of work goes into researching each entry and this year's finalist was not an easy decision. I'd like to congratulate Park Place Condominium Corporation as the 2014 recipient of this award. Park Place impressed our committee with their "Small Town in the City." Park Place really defined what it means to be a successful condo community.

Our Education Committee has started the process of reviewing the 100 – 300 course material in effort to deliver updated content. The concept is for each chapter to be consistent with their offering, while keeping differences in provincial legislation in check. This is a massive undertaking and will take a lot of time and work.

Each year CCI chapters compete for the 'Lorne Young Chapter of the Year' distinction and plaque. The award goes to the chapter providing the most benefit to its members and exceeds the minimum requirements in all areas of chapter re-certification requirements. I am pleased to advise that for the second year in a row CCI South Alberta was named Chapter of the Year at the CCI National Leaders' Forum in Toronto, November 5th, 2014 for Tier 1.

Lastly, I'd like to congratulate Maria Bartolotti who was presented with her FCCI recognition award. Well done Maria!

I look forward to a successful growth year for CCI in 2015 and wish you all the best of the holiday season.

*Greg Cortese, President
CCI South Alberta Chapter*

EXECUTIVE PROFILE



Doug Forbes

Doug was introduced to condominium law as an articling student in 1989, and then as a unit owner. Doug subsequently became a member of the Board of Directors of his Condominium's Corporation, and eventually President.

Doug has been a professional member of the Canadian Condominium Institute (Manitoba Chapter) for over 20 years. He has been on the Board of Directors of the Manitoba Chapter since 1998, and is a Past President of the Manitoba Chapter. Doug is also the Chair of the Manitoba Chapter's Ethics Committee and the past-chair of the Property Tax Committee.

Doug is also currently a member of the Executive Council of the governing body of CCI (National) and has recently been elected as Vice-President of CCI (National). As a partner in the law firm of Thompson Dorfman Sweatman LLP, Doug acts for condominium corporations, developers, lenders, and individuals in apartment, townhouse, and bare land style condominiums. In addition to his involvement in condominium law, he practices in the area of Real Estate law and in Corporate/Commercial law.

Doug frequently provides advice and assistance in areas such as drafting, interpreting, and amending declarations and by-laws, disputes between boards and unit owners, collection of common expense arrears, and assisting in governance issues for condominium developments of all styles and sizes. Doug regularly contributes to, or chairs, meetings for condominium corporations.

Doug says he likes condominium law because "it is a nice mixture of commercial or business law and a human element. There is more at stake than money, it involves how people live, and how they live with each other."

Doug regularly presents at seminars and workshops on condominium issues at both a local and a national level. Recently he has been providing seminars on the new Condominium Act that is coming into force on February 1, 2015 in Manitoba. ❄️

**Following the CCI National
November 5th Annual General
Meeting, we are pleased to
introduce your 2014-2015
National Executive Board
and National Council.**

National Executive Board

Chairman: Geoffrey K. Penney, BA, LLB, ACCI (NL)
President: Bill Thompson, BA, RCM, ACCI, FCCI (TOR)
Vice-President: Douglas J. Forbes, LLB (MB)
Member-at-Large: Jim Allison (VAN)
Member-at-Large: Kim Coulter, B.Tech. (Arch.Sc), ACCI, FCCI (GHC)
Member-at-Large: Stephen Cassady, CCI (Hon's) (S AB)
Member-at-Large: Jamie Herle, LLB, ACCI (N SK)
Secretary/Treasurer: Peter K. Harris, CA, ACCI, FCCI (TOR)

National Council

Vancouver Chapter: Paul Murcutt
North Alberta Chapter: Anand Sharma
South Alberta Chapter: Greg Cortese
North Saskatchewan Chapter: Donna Singbeil
South Saskatchewan Chapter: Gerry Cairns
Manitoba Chapter: Jane Lecours
Northwestern Ontario Chapter: Doug Shanks
Windsor Chapter: William C. Norris
Huron Chapter: Sonja Hodis, LLB
London Chapter: Don Peter, CIM, P.Mgr., CMM, CCI (Hon's)
Golden Horseshoe Chapter: Maria Finoro, RCM, ACCI, FCCI
Toronto & Area Chapter: Sally Thompson, P.Eng.
Ottawa Chapter: Constance Hudak, MBA
New Brunswick Chapter: Phil Williams
Nova Scotia Chapter: Robert St. Laurent
Newfoundland & Labrador Chapter: Carol Burke

UPCOMING EVENTS

Golden Horseshoe:

February 13, 2015 – Luncheon – Dealing with Differences (Kitchener)

London & Area Chapter:

January 20, 2015 – Seminar

March 24, 2015 – Seminar

Manitoba Chapter:

January 22/2015 – Luncheon – Help Me, I'm a Condo Director

February 19, 2015 – Luncheon – Legal Liabilities – What You Don't Know CAN Hurt You

March 19, 2015 – Luncheon – Board Meetings: Moderating/Board Turnover/Succession Planning

April 23, 2015 – Luncheon – Teamwork: Boards and Property Managers

May 21, 2015 – Luncheon – Money Matters

North Alberta Chapter:

January 8/2015 – Luncheon – Making Your Condominium More Saleable

January 21/2015 – Seminar – Condo Communications

January 24 & 25 – Condominium Management 100

February 12, 2015 – Luncheon – Preparing for Major Capital Projects

February 18, 2015 – Seminar – By-Laws & Enforcement

February 19, 2015 – Condo 101

March 19, 2015 – Condo 101

March 21-22, 2015 – Condominium Management 100

March 28-29, 2015 – Condominium Management 200

South Alberta Chapter:

January 27/2015 – Luncheon

February 21 & 28, 2015 – Condominium Management 200

February 24, 2015 – Luncheon

March 24, 2015 – Luncheon

March 26, 2015 – Condominium Management 101

April 16, 23 & 30, 2015 – Condominium Management 300

Vancouver Chapter:

January 13/2015 – Seminar: Council Meetings

February 7/2015 – Seminar: Contracts for Major Project; Selecting a Contractor

March 10, 2015 – Seminar: Volunteers in Your Strata

This is just a snapshot of all the great events being held across the country...to register for any of these or see more fabulous educational offerings, please contact your local chapter.

For more information on more upcoming events in your area, please visit the chapter website.

www.cci.ca

Your Guide to Winter Safety in the Home

Reprinted with permission from the Technical Standards & Safety Authority's *Winter Wise – Your Guide to Safety* booklet – Winter 2014. Visit www.safetyinfo.ca for valuable advice on safety issues around your home.

Four Steps to CO Safety

Carbon monoxide (CO) exposure is a deadly but common hazard in your home that can happen any time of year. Especially when the cold, winter weather settles in, we look to things like our furnace or gas fireplace to heat up our homes.

To keep your home safe from CO hazards, follow these four steps:

- 1. Be aware of the hazard.** Carbon Monoxide (CO) is an invisible, odourless and poisonous gas that is produced by common household appliances such as your furnace, fireplace, gas stove, propane heater, kerosene lantern or any other fuel burning equipment.
- 2. Eliminate CO at the source.** Get your home's fuel-burning appliances and equipment inspected by a certified technician who works for a TSSA-registered heating contractor. To ensure a technician is registered, call 1-877-682-TSSA (8772) for confirmation.
- 3. Install certified CO alarms.** They will warn you of rising CO levels, giving you time to take potentially life-saving action. For proper installation locations, follow manufacturer instructions or ask your local fire department.

- 4. Know the symptoms of CO poisoning.** They are similar to the flu –nausea, headache, burning eyes, confusion and drowsiness – except there is no fever. If they appear, immediately get everyone, including pets, outside to fresh air and call 911 and/or your local fire department.

Alarm Yourself

In addition to ensuring that your home's fuel-burning equipment has been inspected professionally, your next important line of defence against CO is having properly in-

stalled and maintained alarms.

When it comes to alarms, follow these tips:

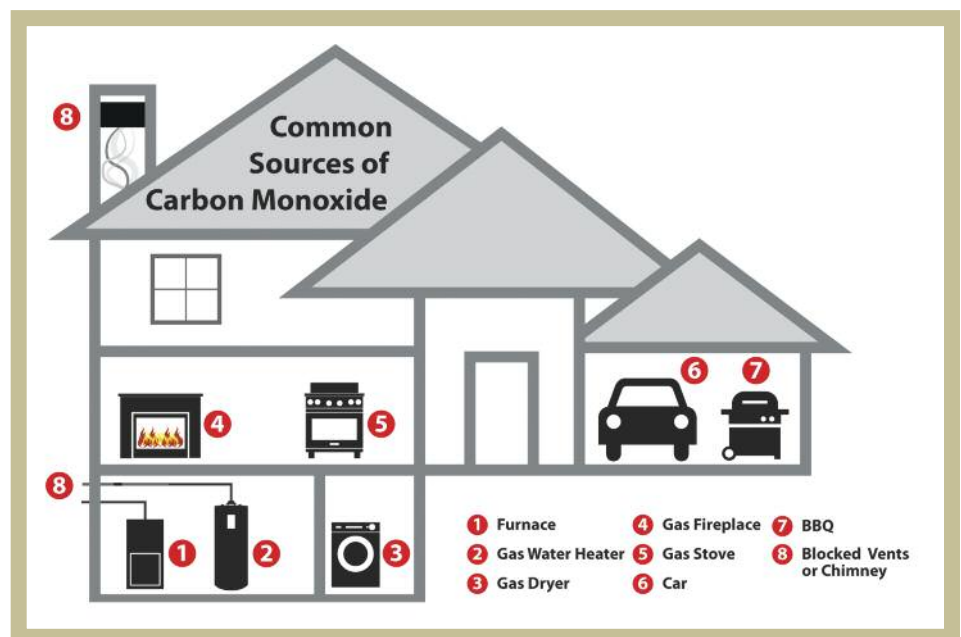
DO'S AND DON'TS

DO install CO alarms:

- on every level of your home;
- near sleeping areas; and
- according to manufacturer's instructions.

DO NOT install CO alarms near:

- windows or vents;
- bathrooms;



- heating or fuel-burning appliances
- smoke alarms (unless combination alarm)

Test once a month

Remember to test your CO and smoke alarms once a month by pushing the test button on the unit.

Change batteries annually

Replace batteries once a year, including back-up batteries for plug-in alarms. Use fall daylight savings time as a reminder.

Replace CO alarms when required

CO alarms wear out over time. Check the manufacturer's instructions to find out when your particular unit should be replaced (usually after 7-10 years for CO alarms and 10 years for smoke alarms).

Home Heating Safety

An annual inspection is a must

In Canada, we depend on our heating systems to keep us safe and warm when the thermometer plunges and the snow falls, so it is vitally important to check and maintain your furnace and/or fireplace. Heating systems that burn fuel such as gas, oil or wood need to be inspected and maintained annually. It is the only way to ensure efficient and safe operation.

For furnaces, while you can and should change filters and check for leaks, the only person qualified to inspect your natural gas, propane or oil furnace is a certified heating contractor.

All certified heating contractors are registered with TSSA, so if you are not sure whether your contractor is certified, call TSSA at **1-877-682-8772** for confirmation. You can also visit **COSafety.ca** for a list of certified contractors.

Remember, furnace and fireplace inspections are your responsibility.

If you do not arrange it, it will not get done. Do not forget to have your furnace, fireplace or any fuel-fired appliance inspected annually!

Getting Started

- Ask a friend or your fuel supplier for recommendations.
- Obtain at least three written estimates specifying the work to be done, who will do the work, as well as start and completion dates.
- Determine whether repairs are covered by a warranty.
- Avoid 'fly-by-nighters', especially people who show up at your door offering special deals.



Have You Had Your Furnace Inspected?

Your furnace needs to be inspected annually by a certified heating contractor to maintain peak efficiency and protect your family from the dangers of carbon monoxide.

It is the smart thing to do and it is your responsibility.

Be sure to use a certified heating contractor registered by the Technical Standards and Safety Authority. To ensure a contractor is registered, call 1-877-682-TSSA (8772) for confirmation.

Your Home Heating System

To keep your home heating system working the way it should this winter there are actions that you as the owner can take, but there are things that need to be performed by a professional.

Check out the list below to see what needs to get done with your heating system.

Do-It-Yourself

- ☐ Examine the heating system occasionally for signs of deterioration, such as water stains, corrosion or leakage.
- ☐ Clean the furnace air filters in forced-air systems frequently.
- ☐ Keep the area around the furnace free from dust, lint, rags, paint, drain cleaners and other materials or chemicals that could catch fire or explode if they become too hot.
- ☐ Make sure warm-air outlets and cold air outlets are not covered by carpets or blocked by debris.
- ☐ Make sure walls, other obstructions or new renovations do not block the heating system's air supply.

Call a Professional

- ☐ If your heating system stops working, check the electrical fuse, the switch and the thermostat, and then call for a heating technician.
- ☐ If snow or ice covers your outdoor regulator, contact your fuel supplier.
- ☐ Under no circumstances should unqualified people tamper with heating systems. If you have questions or concerns, contact a qualified heating contractor or call TSSA at **1-877-682-8772** (TSSA).

Reprinted with permission from the Technical Standards & Safety Authority's *Winter Wise – Your Guide to Safety* booklet – Winter 2014. Visit www.safetyinfo.ca for valuable advice on safety issues around your home. ■



Ask the Pros

Q: I am a condo owner in Ottawa who is assisting our Board of Directors on finding ways to lower cost of water. At present, our condo includes water in the monthly condo fees but there is no incentive to conserve. Do you have any studies/experience/position papers on how to save water in condos? For example, the City of Ottawa funded the replacement of toilets by low-flush models. Have some condos installed individual metering or passed by-laws to install water-saving devices? I'd appreciate any insight you could give on this matter.

— Alan Amey

A: The issue of reducing utility costs in condominium corporations is ongoing these days and especially in condominiums which do not have separate or smart metering. Developing a utility or water “conservation committee” is a good first step as it allows a dedicated group to explore various options separate from normal board business. As water/energy savings programs come and go, it is wise to explore all avenues.

We have acted for many condominium corporations which have instituted various water conservation measures including acquisition/installation of low flush toilets and low flow shower heads and also institution of annual unit inspections to check for water leaks in toilets and taps. We have also acted for condominium corporations who have installed individual or smart meters. Individual or smart metering however may be a more complex solution as it involves substantial cost as well as a change in the common elements and a new responsibility of the unit owners to personally pay part of what were previously their common expenses.

The acquisition/installation of water saving fixtures brings its own challenges. The issue quickly arises whether the condominium corporation has the authority to pay for the cost to acquire and even to install these fixtures and also whether the condominium corporation can require all owners to take part in the program. A corollary issue is whether there

should be any compensation to those owners who have already installed water saving fixtures on their own.

While one must look at the registered declaration and bylaws as well as the rules of a particular condominium corporation to determine if there are any unique responsibilities of the owners or the condominium corporation regarding replacement of toilet or shower fixtures, generally speaking, there is usually very little of help in this documentation.

While it can be argued that it is outside the duties and responsibilities of a condominium corporation to get involved in unit issues such as replacing toilet or shower fixtures, it can be equally or more persuasively argued that the condominium corporation has the authority to manage the common elements and common expenses. As one of the common expense items is the cost of water and by installing these water saving fixtures, the common expenses can be lowered, it can be argued that the condominium corporation does have the authority to institute this type of program. This argument becomes more persuasive if the expectation is that the savings in the cost of water will completely offset the cost to acquire (and even to install) the water saving fixtures.

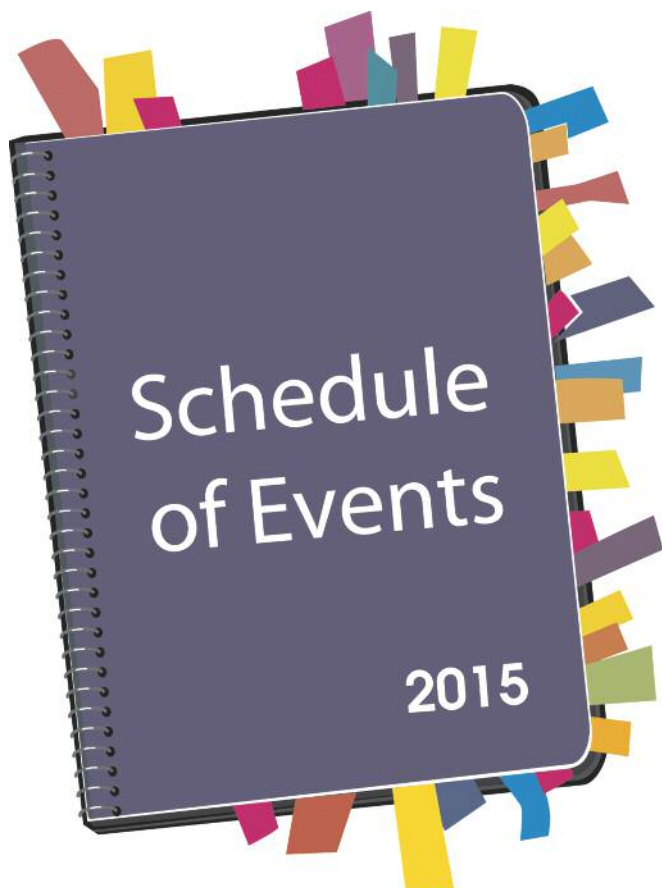
It is clear, however that the cost to acquire and/or install the water saving fixtures cannot come from the reserve fund. This means that if a condominium corporation wishes to institute any program involving the acquisition of water saving fixtures, it will have to organize the program sufficiently far ahead to ensure that the cost can be covered from the corporation's operating fund. Having said this, we have seen some condominium corporations which have borrowed for a water saving program—simply because the payback through reduction in the water expense was quite fast.

One further issue is what obligation the individual owners have to “buy in” to the water saving program. Perhaps they like their own fixtures or perhaps they don't trust the water saving fixtures proposed by the condominium corporation. Obviously, it will take some effort on the part of the condominium corporation to both educate and convince unit owners that installing water saving fixtures is a good idea.

Clearly, the concept of water and/or utility conservation is something that should be explored by all condominium corporations. The devil is usually in the details.

Answered by John Peart, LL.B., ACCI, FCCI

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