

WINTER 2014

# CONDO CONTACT

OTTAWA SHINES AT TORONTO'S  
**CCI AND ACMO'S  
CONFERENCE**

**IMPORTANT DECISION  
RESPECTING  
CONDOMINIUM  
COLLECTIONS**

**THE EVOLVING  
LITIGANT**



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### 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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## MESSAGE FROM THE EDITORS



**Tim Kennedy**



**Rod Escayola**

Welcome the latest Ottawa edition of the Canadian Condominium Institute's newsletter! Winter is in now in full swing, I hope that you can take a moment to warm your toes and rest those sore backs from shoveling snow with this hot issue. The chapter held its Annual General Meeting; in October and in addition to the election of two new directors (Rodrigue Escayola and I), Nancy Houle treated us to an update on the Province's ongoing review of the *Condominium Act*. Phase Two of the three-step process has been completed, with a number of interesting recommendations being made. For those interested in a more in-depth review of the process, you may visit [http://www.sse.gov.on.ca/mcs/en/pages/condo\\_rev.aspx](http://www.sse.gov.on.ca/mcs/en/pages/condo_rev.aspx). Rod and I are both looking forward to the year ahead. Constance Hudack was also re-elected and will serve as the Chapter's Vice President and Nancy Houle will have agreed to fulfil the role of President.

In the fall, many members of the Ottawa chapter attended the CCI (Toronto) 17th Annual Conference in conjunction with ACO, where our own Jim Davidson was awarded the inaugural **Ron Danks National Volunteer Leadership Award**. We are very proud of Jim – a more deserving recipient would be hard to find.

As the Ottawa condominium market continues to grow, CCI is committed to promoting ongoing education for its members, in the spring two popular courses will be offered, the Director's Course and the popular "Lawyers, Guns and Money".

We want to thank our Chapter's "right hand" Maria Medoro for her ongoing efforts to ensure everything runs smoothly.

Kind Regards,  
**Rod and Tim**  
Editors, *CondoContact*

Tim Kennedy is a partner with the law firm Vincent Dagenais Gibson LLP/s.r.l. and leads the firm's condominium practice.

Rod Escayola heads Heenan Blaikie's Condominium Group in Ottawa

**INTERESTED IN WRITING AN ARTICLE?  
SEE DETAILS ON PAGE 7.**

## CONDO CONTACT

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## P R E S I D E N T ' S M E S S A G E



On behalf of the CCI-Ottawa Board of Directors, and the Ottawa condominium community, I would like to express our gratitude, appreciation, and thanks to our outgoing members of the Board: former President, John Peart, and board member, Steve Laviolette. Both John and Steve's contributions and dedication to our chapter have resulted in increased educational opportunities for our condominium community, growth in membership in our chapter, and increased communal knowledge and understanding of general condominium issues. I also take this opportunity to welcome our new board members, Tim Kennedy, Rod Escayola and Christopher Lyons. I am thrilled to be part of such a great team, and look forward to a busy and productive year for our chapter!

This year, one of our key objectives is to increase educational opportunities. Our Fall Directors' Course was, once again, sold out, and our upcoming spring course is heading in the same direction. We repeatedly hear from our members that CCI is a great educational resource, and our members want more. We are listening to our members! We will be starting off the new year with our popular "Lawyers, Guns, and Money" seminar, featuring Jim Davidson and John Peart. In February, an "insurance" seminar will be held, followed in March by a session on how to run an effective AGM. Our goal is to provide at least one educational opportunity per month for the year 2014. As we move forward, we will also be developing an upper-level Director's Course (for those members who have already completed the introductory course, and want more!).

Another focus this year will be our chapter website. We will be overhauling the site, and aiming to provide a more engaging, interactive, and dynamic site. We encourage you to visit the site frequently as updates to seminars and events will be posted regularly.

As we settle into winter, I look forward to seeing you on the slopes, the canal or the ice slides!

Nancy Houle  
President-CCI-Ottawa

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## OTTAWA SHINES AT TORONTO'S

# CCI AND ACMO'S CONFERENCE

Rod Escayola, Heenan Blaikie, LLP



Last November, the Toronto chapter of CCI held its 17th Annual Conference with ACMO. The event was a resounding success with 1,312 members in attendance (up from 1,186 last year) and with 199 exhibitors (up from 164 last year). This conference, which spanned over two days, provided the attendees with a wealth of knowledge, products and services,

with 65 different speakers presenting on key condominium topics such as how to enforce your corporate documents, insurance issues, how to tackle major building, administrative of financial problems, human rights issues, the fiscal impact of a revenue generating activity and many, many more.

This year, Ottawa's presence did not go unnoticed with many speakers being from Ottawa and with a special recognition for an Ottawa based lawyer.

Nancy Houle (Nelligan O'Brien Payne) presented on the "Rapid fire legal panel". When comparing the rights and obligations of home owners versus those of condominium owners, Nancy explained "If the rights attached to ownership of real property has always been seen at Common law as being King of your castle, choosing to live in a condominium community comes with the acceptance that our 'Condo is our Kingdom', with its own rules and regulations".

Not far from there, I was honoured to speak on a panel dealing with "Nuisance, noise and smells" with Stephen Karr (a lawyer with Sheaffer LLP) and Robert Weinberg (President and CEO of Percel Inc.). More than 200 participants attended this presentation, despite the fact it was the last one of the Conference. During this presentation I reminded participants of the importance of approaching all non-compliance issues with a method and a system to ensure that you treat everyone fairly and that you do not miss any of the crucial steps. I usually recommend the three-step approach. To illustrate how wrong a

poorly handle complain can go, I spoke of the Dyke Case where damages and costs were awarded against a corporation for its failure to enforce its rules and regulations.

Axia Management showed up in great numbers with more than 8 managers in attendance. "It was quite the road-trip, with all of us coming here. It is an amazing opportunity to make new contacts, see old friends and learn from very experienced presenters, advised Andrée Ball (Axia).

Constance Hudak, vice-president of the Ottawa Chapter of CCI was also in attendance and left absolutely energized about what CCI can accomplish, here in Ottawa. With a new board recently elected (now consisting of Nancy Houle, Constance Hudak, Andrée Ball, Ian Davidson, Stéphanie Courneyea, Tim Kennedy, Chris Lyons and myself), Constance is "confident that setting up a new Committee Structure will assist CCI Ottawa to build on its successes and gain momentum to tackle future challenges". She added that "A number of other chapters offered insight as to how they ... gained momentum vis a vis visibility and membership". After all, "Ottawa's condominium market is growing exponentially here in Ottawa, with an increasing number of families living in condominiums. Sharing knowledge and educating our boards is crucially important to protect everyone".

The highlight of the conference was when Ottawa's Jim Davidson (Nelligan O'Brien Payne) received the inaugural Ron Danks National Volunteer Leadership Award at the annual awards dinner. This award, which will only be awarded exceptionally, was presented to Jim to recognize his exemplary contribution, leadership and services to CCI. Jim has been an inexhaustible source of knowledge and a great mentor to many in the condo community in Ottawa and across the province.

Congratulations Jim! It is well-deserved.

*Rod Escayola heads Heenan Blaikie's Condominium Group in Ottawa, is on his condominium board and is on CCI's board of director.*

*(continues on page 8)*



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**name:** Josée Deslongchamps, RCM, ACCI  
**profession:** Senior Property Manager, DES Services Inc.  
**location:** Ottawa, ON  
**chapter:** CCI Ottawa Chapter

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Ottawa Carleton Standard Condo Corp 0917  
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Matt Minter                        Robert Kinsman

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*James Katz*

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*Russell G. Gibson*

## CCI OTTAWA BOARD MEMBER

Christopher Lyons, A. Sc.T.



Christopher Lyons graduated from Algonquin College in 1991 with a diploma in Architectural Technology. Over the course of his career, he has held positions with various architecture and design firms. In addition, Christopher also spent four years working as a condominium property manager, which provided him with insight into the unique qualities of condominium communities. Christopher is currently a senior technologist and partner with Laviolette Building Engineering Inc., a consulting engineering firm established in 1996, which focuses on post-construction Building Envelope Engineering and Structural Engineering services, primarily for condominium clients.

Over the past 20 years Christopher has thoroughly enjoyed working with many of Ottawa's condominiums, providing them with assistance in both engineering and property management, and now looks forward to serving as a Director with the CCI Ottawa Chapter.

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Management Company:	Contact Name:	
Address:	Suite #:	
City:	Province:	Postal Code:
Phone: (     )	Fax: (     )	Email:
Condo Corporation Address:	Suite #:	
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## Message from the President

BY GEOFF PENNEY, BA, LLB, ACCI  
CCI NATIONAL PRESIDENT

Greetings to all of our CCI friends across the country. After a busy and exciting holiday season has concluded, we all now have a chance to reflect and breathe. During the holidays, I happily rediscovered the magic of the season through the wonder of my three year old daughter. I hope all of you enjoyed the holidays and took time to visit with friends and loved ones. On behalf of the National Executive, we wish you all health and prosperity in this new year.

As many of you know, CCI National held its annual Leaders' Forum, Council Meeting and AGM from November 14 to November 16, 2013. Once again all events were very well attended and it was great spending time with colleagues from all of our chapters.

First introduced a few years ago, our Leaders Forum is quickly becoming the highlight of our national meetings. The Forum, led by panels of CCI members, focuses on Chapter related issues with tips and guidance on how to make Chapters more efficient, how to improve member services and generally how to make Chapters more successful. General feedback from Council members and guests was quite positive again this year with many saying that the information is both practical and informative.

Our first presentation was entitled "Being the Best Chapter You Can Be" and focused on ways to improve

the work of Chapter Boards and how to give proper direction to administrators to ensure the objectives of the Chapter are reached. The second session was all about communication - how to improve it and the benefits of keeping those lines of communication open. Our panel offered tips on communication strategies at multiple levels - National to Chapters, Committees to National and Chapter to Chapter. Rounding out the Forum this year was a great presentation entitled "Setting Membership Fees" which examined the fee structure and practice for four of our Chapters.

Our AGM went very well under the guidance of our National Chair, Jim McKenzie. All Chapter and Committee reports demonstrated that CCI continues to attract new members and provide valuable information and education across the country. We were very pleased with the news that was reported. The Executive welcomed Jim Allison of Vancouver Chapter on board this year. Jim brings experience and insight to the Executive and we look forward to working with him.

Our annual gala banquet was a great success again this year, having our highest attendance to date for such an event. Special thanks to Alison Nash and Diane Gaunt of Taylor Enterprises for organizing everything. As you know, at the banquet we honor the exceptional achievements of our chapters and

of some of our individual members. Firstly, congratulations to Jamie Bleay (Vancouver) and Helena Smith (North Alberta) on receiving their Fellowship of the Canadian Condominium Institute Awards (FCCI). Congratulations also to Stephen Cassidy (South Alberta), Donald Peter (London) and Chetan Thakore (North Saskatchewan) on receiving their Distinguished Service Award (DSA).

Of special note, this year CCI National announced the inaugural recipient of the *Ron Danks Volunteer Leadership of the Year Award* to James Davidson for his longstanding and valuable contribution in keeping our organization informed of the developments in condominium case law across the country.

All of us at the National Executive look forward to our continued work with the Chapters, committees and members in advancing the goals of the condominium industry. Please watch for news of further developments as the new year unfolds. Thanks to everyone for your continued support and contributions to "Canada's Condo Connection" - CCI. 🍁

# 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 pass-word is "condocases".*

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

## THE HOT TOPIC – Condominium Collections

**A recent Ontario case confirms the rights of condominium corporations to apply owners' payments to the oldest arrears. Here's my summary of the case:**

Durham Condominium Corporation No. 56 v. Stryk (Ontario Superior Court) April 12, 2013

**Condominium corporation could apply common expense payments (received by pre-authorized debits) to the oldest arrears**

On September 30, 2011, the condominium corporation registered a lien against the owner's unit, covering:

- Unpaid monthly common expenses;
- A chargeback of \$1,254.75, from 2008, for damages allegedly caused by the owner to the parking garage door;
- A chargeback of \$220.36 from July of 2011 for a plumbing invoice allegedly due to the owner's failure to maintain her unit;
- Interest;
- Legal costs.

The owner argued that her pre-authorized payments could not be applied to the chargebacks and the corporation's three month right to lien for the 2008 chargeback had therefore expired.

The condominium corporation argued that the pre-authorized payments could be applied to the chargebacks and the lien was timely because it

covered resulting unpaid arrears for the months of July through September, 2011. The condominium corporation asserted that "payments are applied to the oldest debt so that the three month time to register a lien keeps moving ahead. Therefore each time a payment was received, the default date is moved ahead a further thirty days. This applies to the chargeback for both the garage damage and the plumbing invoice."

The Court agreed with the condominium corporation – at least in relation to the 2008 chargeback. The Court said:

- The chargebacks for the garage door and plumbing problem could be added to the common expenses by virtue of a provision in the corporation's by-laws and Section 92 of the Condominium Act, 1998.
- "As payments came in from the (owner) each month for her common expenses, the default rolled forward every thirty days."

However, the Court held that the condominium corporation was not entitled to recover the chargeback in relation to the plumbing repair because (a) the evidence on this issue was contradictory and therefore would require a trial; and (b) it was "not an amount that is significant enough to warrant the expenditure of public resources for a trial".

Finally, the Court said that the condominium corporation had improperly refused to accept common expense payments tendered by the owner. "As such, (the condominium corporation) did not have the right to charge interest on those payments."

## British Columbia – Strata Plan BCS 3165 v. 1100 Georgia Partnership (B.C. Court Supreme Court), September 17, 2013

### Court action stayed. Arbitration to proceed first

This is a dispute between a strata corporation and its developer (and related parties), primarily respecting cost-sharing in relation to certain shared interests. The dispute resulted in arbitration proceedings commenced by one of the developer affiliates, KBK No. 11 Ventures Ltd. ("KBK"), under the terms of a "Master Easement Agreement" (MEA) relating to the shared interests. A Court action was commenced by the strata corporation and the strata corporation applied for an order allowing the Court action to proceed and staying the arbitration process. The Court ruled against the strata corporation. The Court ordered that the arbitration proceed and that the Court action be stayed (pending determination of the arbitration). The Court's decision included the following:

- "The dispute has its origins in the cost-sharing arrangements among the owners of the Shangri-La, a mixed-use residential, hotel and commercial tower located at 1111 Alberni Street in Vancouver."

*continued...*



## Condo Cases Across Canada Cont'd.

- *"On July 9, 2012, KBK served its Notice of Claim in the Arbitration, seeking an award against the Strata for outstanding costs owing under the MEA and other consequential relief."*
- *"The Strata commenced this action on April 30, 2013."*
- *"The essence of the Strata's complaint reflected in its Response and Counterclaim in the Arbitration is that the easement and cost-sharing structure was to be rational, fair, and equitable among the owners of the parcels but instead was allegedly structured by KBK to prefer the interests of KBK (on behalf of the developer) as owner of the Hotel Parcel and Remainder Parcel."*
- *"Notwithstanding the Strata's view that the Arbitration was an inappropriate forum for the resolution of the complaint, the Strata fully participated in the Arbitration and the Arbitration is now substantially advanced."*
- *"In summary, it is my view that some aspects of the disagreement in this case clearly fall within the scope of section 10.1 of the MEA. These include KBK's claim against the Strata as currently advanced in the Arbitration, the Strata's claims against KBK based on allegations of misrepresentation, fraud, and breach of statutory and fiduciary duties related to the easement and cost-sharing structure, and ultimately the validity of the MEA. In addition, some aspects of the disagreement arguably fall within the scope of section 10.1 of the MEA. These including the validity of the Facility Area Easements, the Lease Options, and the Assignment & Assumption Agreement. Finally, some aspects of the disagreement clearly fall beyond the scope of section 10.1 of the MEA. These include the claim for damages and/or an accounting of profits as against the defendants other than KBK, the claim for injunctions against the members of the Developer other than KBK, and the claim against (another defendant)."*
- *"It is not practical for the action to proceed before the arbitrator has determined the scope of the Arbitration because that determination will directly affect the scope of the action."*
- *"Further, the matters in issue in the action that are beyond the scope of the Arbitration are intertwined with and could be affected by the outcome of the Arbitration... As such, those claims will be affected by the outcome of the Arbitration."*

### Alberta — First Calgary Savings and Credit Union Ltd. v. Perera Shawnee Ltd. (Alberta Court of Queen's Bench), October 17, 2013

#### **Condominium corporation cannot levy special assessment only against the developer's unsold units (for amounts required to rectify alleged original building deficiencies)**

In a receivership proceeding, the Court was asked to determine whether or not a condominium corporation could levy a special assessment only against the developer's unsold units. The special assessment was required to rectify alleged original building defects.

The developer was insolvent, and had been placed into receivership by a creditor which held mortgages against the developer's unsold units.

The condominium corporation applied for a Court order to lift a stay of proceedings in the receivership, so as to allow the condominium corporation (pursuant to the corporation's by-laws) to proceed with the proposed special assessment against only the developer's units. The creditor and receiver opposed the application, and were successful. The Court said:

- *"I am simply not satisfied that the purpose of s.139(1)(c) of the Condominium Property Act is to enable the Condo Corporation to impose a disproportionate levy against the remaining Perera units, which would give them the right to become, in effect, a super-priority creditor over all secured creditors. For reasons basically set forth by the Court of Appeal in Fantasy Homes, I reject the Condo Corporation's claim."*
- *"The charge sought to be levied in this case is not related to Perera's ownership of the condominium unit."*
- *"There is no basis for surmising that the 'the Legislature intended that a regime of disproportionate allocation of levies [would] apply to cases such as this.'"*

### Quebec — Audet v. Syndicat de la corpropriété Jardins Valmer Inc. (Quebec Superior Court) (August 27, 2013)

#### **Amendment to Declaration to increase threshold for owners' approval of common element changes upheld; but solarium still gets to stay**

The Syndicat is comprised of 82 units. The owners (Audet-Clavel) installed a solarium on their exclusive use area in 2008. Subsequent to the installation, a meeting of the owners was called to vote on proposed amendments to the Syndicat's governing documents, including, among other things, increasing the threshold for owners' approval of installations upon the common elements, and a vote on whether the Audet-Clavel's solarium must be removed. The proposed amendments to the governing documents were approved by the owners. The owners also voted in favour of requiring the removal of the Audet-Clavel's solarium. The Audet-Clavel's brought the matter to the Court. The Audet-Clavels argued that the increased threshold for approval would effectively make it impossible for new requests for modifications to be approved, and took the position that the amendments were an abuse of process.

The Court found that the amendments to the Syndicat's governing documents were lawful. However, the Court did overturn the decision of the owners in relation to the solarium. The Court found that the governing documents in force at the time of the installation of the solarium did not prohibit the installation, and the amendments to the governing documents could not be applied retroactively. ❁

# 2013 CCI LEADERS' FORUM



## CCI Fall Leaders Forum and Awards Dinner

Once again, the National Council descended upon Toronto for their Annual Fall Meeting, and this time, over 60 delegates from all across Canada joined them for the Leaders Forum, highlighting the successes of our chapters. The Forum is also a great chance for our chapters to teach each other some ideas that have worked for them, thus leading to a stronger organization in all parts of Canada.

The highlight of the week was the 2013 CCI National Awards Dinner, where we recognize individuals with Fellowships of the CCI (FCCI) and Distinguished Service Awards (DSA) along with the inaugural presentation of the Ron Danks Volunteer Leadership Award. Finally, celebrated at the Dinner are the winners of the H. Penman Smith Newsletter of the Year Award and the Lorne Young Chapter of the Year Award. With over 140 people in attendance, the evening was a fun-filled event that reminded everyone that the strength of CCI is in its people, who are accomplishing so much for the Canada-wide condominium community.

Congratulations to all of our winners!



Jim Davidson (Ottawa) - Ron Danks Volunteer Leadership Award



Jamie Bleay (Vancouver) - FCCI



Helena Smith (North Alberta) - FCCI



Chetan Thakore (North Saskatchewan) - DSA  
(accepted by Jamie Herle)



Don Peter (London & Area) - DSA



Stephen Cassady (South Alberta) - DSA



## CCI Spring 2013 Leaders Forum - Chapter Award Winners Cont'd.



Nova Scotia - Tier One Penman Smith Newsletter of the Year



Toronto - Tier Two Penman Smith Newsletter of the Year



South Alberta - Tier One Lorne Young Chapter of the Year



North Alberta - Tier Two Lorne Young Chapter of the Year



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## CHAPTER CHATTER



**Vancouver Chapter** – The CCI Vancouver Chapter has had a busy Fall, and are gearing up for an even busier Winter! On October 26, 2013, CCI Vancouver held its last educational seminar for 2013 on Depreciation Reports. With over 40 people in attendance, feedback received confirmed that the topic was very important.

At the 2013 CCI Vancouver Annual General Meeting, we were able to report that membership numbers were up approximately 15% over last year. (Right now membership is up over 50% from last year!) At the AGM, Janice Pynn, Fern Barker and Gerry Fanaken were elected to an already strong CCI Vancouver Board of Directors, making this is the largest Board elected to date!

On November 21, 2013 we held our last Lunch & Learn of the year on asbestos in condominiums, and, given the many questions asked by those in attendance, the topic of asbestos will be an ongoing topic for discussion at strata council meetings.

CCI Vancouver is proud to announce that Paul Murcutt has been appointed as the CCI Vancouver Representative to the CCI National Board, while Jim Allison was elected as a Member-at-Large to the CCI National Executive at the CCI National AGM in Toronto. Paul will be reporting to our chapter Board about National initiatives for our chapter, while Jim will be working with the National Executive to develop and provide tools to implement those initiatives.

The CCI Vancouver Board are putting the finishing touches on its 2014 educational seminars, lunch & learns and any other initiatives the Board proposes to move forward with in 2014. Some of those ini-

tiatives are to significantly increase our membership base and to make the educational seminars more accessible, as well as setting up a Level 100 & 200 Condo Course. Check our website in the coming weeks for further updates!

*Jacqueline Willmore*  
*CCI Vancouver Chapter Administrator*



**Manitoba Chapter** – Although our Winnipeg winter had been delayed this year, Mother Nature has made it quite clear that she won't be taking easy on us this year as we are currently in a deep freeze. With the holidays in full swing this weather makes it quite easy to curl up with a nice cup of hot chocolate!

Over the last couple months we have been focusing on better marketing our Chapter and updating our services so that we are able to start taking full advantage of social medias in the New Year. We have given our Newsletter a facelift and have moved to a full colour process and a more sleek magazine style look and have received great feedback from our members!

In mid-November we launched our new website which now enables our members to register for our education sessions online. Our new website gives us a fresh look and will allow us to easily integrate social medias in the near future. Along with the launch of our website and new newsletter, we also launched a new Referral Program for entice our members to assist us in increasing our membership base.

Our focus in the New Year is to increase our membership base and make sure we are continuously showing value to all our existing members. We are currently working on developing solicitation letters to send out to prospective

Professional & Business Partner Members. In order to reach out to the condo community, we are hosting a Property Managers wine and cheese event and the end of January. We feel it is very important to show our Property Managers the value that CCI brings to our Condo Corporations.

We continue to patiently await the confirmation of the Regulations to the New Condominium Act and are hoping it will be released early in 2014 so that we can make the necessary revisions to our education programs. We have hosted 2 Lunch & Learn sessions already this year and we have 6 more to go in the New Year. With topics varying from Board Orientation to Legal Liabilities we have seen an increase in our attendance with 35-50 attendees each session.

We are looking forward to hosting our National Spring Conference in June 2014. We wish you all a happy holiday and all the best in 2014!

*Millanne Baxter*  
*CCI Manitoba Chapter Administrator*



### London & Area Chapter –

The London and Area Chapter held its Condominium Course on October 26th and November 2nd, 2013. There were 77 students in attendance for this event. It was a very participatory group with many questions posed and real life examples provided to elucidate the material. The evaluation forms provided by those in attendance will assist the Education committee to tweak the presentations going forward and the many positive comments will assure

*continued...*



## CHAPTER CHATTER

presenters that their efforts are appreciated. The local chapter made donations to charities selected by the speakers as an expression of our thanks for the continued excellent learning opportunities they afford.

The Education Committee has had great support setting the yearly seminars:

November 19th: Bart Porter from Stevenson & Hunt Insurance Brokers Ltd and Allen W. Kelly of Adjuster, Crawford & Company (Canada) Inc addressed the important issues of "Insurance Rates and Risk Management".

On January 21st mental health educator Dawn White will speak on "Taking care of business by taking care of yourself"; Dawn has presented in the past on Hoarding and How to Deal with Difficult People and provided some valuable tools for those serving condominium corporations.

On March 25th Dave Leff of Tender Lawn Care will coordinate a seminar on "Getting Your Property Ready for Spring": topics will include a review of practices following the pesticide ban, tree care, working with contractors to get the best results for our properties and more.

On May 29th a legal panel will present "There are no Stupid Questions" Lawyer Jeff Bell will host this ever popular and informative session.

For information please contact the Administrator at [ccisw@cci-sw.on.ca](mailto:ccisw@cci-sw.on.ca)

*Gina Darlene*  
*CCI London and Area Chapter Administrator*



**Ottawa & Area Chapter** – The holidays are just around the corner and we say good bye to a great year for our chapter and welcome the New Year with excitement!

In October, our AGM had a fantastic turnout. We said farewell to our President John Peart and board member, Steve Laviolette. We thank them both for their years of service and tremendous dedication to our chapter. In saying goodbye, we say congratulations to our new President Nancy Houle. Nancy has been a member of the board for a number of years and is a valued member of our chapter. We also welcome our new board members, Tim Kennedy, Rod Escayola and Christopher Lyons. We are excited to have them on board! We are also fortunate to have returning to the board this year, Constance Hudak, Andree Ball, Stephanie Courneyea, Diana Carr, and Ian Davidson.

Our November Directors Course has once again sold out, and our upcoming spring course is receiving great attention. There is no doubt that education continues to be of utmost importance to our members, and we are happy to provide a strong educational series, anchored by our Directors Course. We look forward to seeing you in the new year at our ever popular "Lawyers, Guns and Money" seminar in January.

For information on membership in the CCI-Ottawa Chapter or to enquire and register for any upcoming events, please contact the chapter at [cciottawa@cci.ca](mailto:cciottawa@cci.ca).

*Maria Medoro*  
*CCI-Ottawa and Area Chapter Administrator* 🍁

## EXECUTIVE PROFILE



### Jim Allison

Jim has been in the condominium (strata here in BC) management industry since 1987 and currently

owns his own management company in Burnaby, British Columbia. Jim is focussed on continuing education for his team at Assertive Property Management, his clients and himself. It is that interest in education that led him to join the CCI Vancouver Chapter several years ago.

In the past Jim has served on the Board and as President of PAMA, the Professional Association of Property Managers which focusses on education for residential property managers. Outside of work Jim is very involved in Speed Skating serving as a Director of Speed Skating Canada and as a volunteer official. Jim has over the years served in many capacities in organizations including Big Brothers and associations assisting the physically and mentally challenged. Jim has a growing interest in the field of elder care – particularly how it can be integrated into condominium living.

Jim is a strong advocate for the role of volunteers in our community and uses the insights gained from his active volunteerism over many years to the benefit of his clients and other not for profit organizations. Jim finds working with volunteer Board (Council here in BC) members brings a high level of personal satisfaction, heightened when those members have attended CCI workshops and seminars resulting in an increase in professionalism at the board level. Jim is committed to finding new ways to motivate current volunteers and recruit new volunteers to serve in any way they can.

Jim is currently working on attaining his ACCI designation from the Canadian Condominium Institute. 🍁

## UPCOMING EVENTS

January 28	Guns, Lawyers & Money	Ottawa & Area Chapter
Feb 1	Sustainable Building Upgrades - Energy Incentives	Vancouver Chapter
February 1 & 8	CM 200 Course	South Alberta Chapter
February 6	Condo 102 Course	Toronto & Area Chapter
February 13	Writing Bed Bugs Out	North Alberta Chapter
February 18	Impersonal Challenges & Conflict Resolution	Manitoba Chapter
March 1 (then on Saturdays thereafter)	Level 300 Course	Golden Horseshoe Chapter
March 13	Dealing with Bullies & Difficult People	North Alberta Chapter
March 20	Safer Communities & Neighborhoods Act	Manitoba Chapter
March 25	Spring Maintenance	London & Area Chapter

For more information on any of these events, please visit the chapter website, which can be accessed through:  
<http://www.cci.ca/CONTACTUS/chapterlocations.asp>



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# Important Decision Respecting Condominium Collections

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James Davidson, LLB, FCCI

A recent Court decision contains some important guidance for condominium corporations when it comes to collections from owners.

The key principles expressed in the decision are as follows:

- Condominium corporations can apply payments (including pre-authorized debits) to the oldest arrears, so that “the three month time to register a lien keeps moving ahead”. [I recommend that condominium corporations take care to ensure that their unit ledgers reflect the fact that all payments are being applied to the oldest arrears. Although not necessary (according to this Court decision), a cautious approach is also to have this stated in a by-law and/or to advise owners that all payments are applied to the oldest arrears.]
- Chargebacks for damages or repairs (for which an owner is responsible) can be added to the common expenses in appropriate circumstances. [For any such chargeback, I recommend that the condominium corporation review the corporation’s governing documents and confirm that the chargeback can be added to the common expenses.]
- Condominium corporations should accept all payments from the owner – unless the owner purports to make a partial payment “in full satisfaction of all arrears”. [If the owner says that a partial payment is being made “in full satisfaction of all arrears”, the condominium corporation may not be able to accept the payment (unless of course the corporation is in fact willing to accept the payment in full satisfaction of all arrears).]
- In some cases, minor items should not be pursued. If the collection right is not absolutely clear, a Court might say that a minor item does not merit a trial.

Here’s my summary of the cases, prepared for **Condo Cases Across Canada** (which is published quarterly by CCI National).

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**Durham Condominium Corporation No. 56 v. Stryk (Ontario Superior Court) April 12, 2013.**

**Condominium corporation could apply common expense payments (received by pre-authorized debits) to the oldest arrears**

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On September 30, 2011, the condominium corporation registered a lien against the owner’s unit, covering:

- Unpaid monthly common expenses;
- A chargeback of \$1,254.75, from 2008, for damages allegedly caused by the owner to the parking garage door;
- A chargeback of \$220.36 from July of 2011 for a plumbing invoice allegedly due to the owner’s failure to maintain her unit;
- Interest;
- Legal costs.

The owner argued that her pre-authorized payments could not be applied to the chargebacks and the corporation’s three month right to lien for the 2008 chargeback had therefore expired.

The condominium corporation argued that the pre-authorized payments could be applied to the chargebacks and the lien was timely because it covered resulting unpaid arrears for the months of July through September, 2011. The condominium corporation argued that “payments are applied to the oldest debt so that the three month time to register a lien keeps moving ahead. Therefore each time a payment was received, the default date is moved ahead a further thirty days. This applies to the chargeback for both the garage damage and the plumbing invoice.”

The Court agreed with the condominium corporation – at least in relation to the 2008 chargeback. The Court said:

- The chargebacks for the garage door and plumbing problem could be added to the common expenses by virtue of a provision in the corporation’s by-laws and Section 92 of the *Condominium Act*, 1998.
- “As payments came in from the (owner) each month for her common expenses, the default rolled forward every thirty days.”

However, the Court held that the condominium corporation was not entitled to recover the chargeback in relation to the plumbing repair because (a) the evidence on this issue was contradictory and therefore would require a trial; and (b) it was “not an amount that is significant enough to warrant the expenditure of public resources for a trial”.

Finally, the Court said that the condominium corporation had improperly refused to accept common expense payments tendered by the owner. “As such, (the condominium corporation) did not have the right to charge interest on those payments.”



# The Evolving Litigant

By Marc Bhalla, Q. Med. - Elia Associates



Condominiums are rarely at a standstill; many are literally active 24 hours a day, 7 days a week. An array of individuals contribute to the ever-changing nature of the community. Owners, tenants, property managers, security guards, cleaners and other personnel can come and go. All are potential participants in

disputes and each may have a varying level of commitment to or interest in the condominium community. In the course of an emerging conflict, this can affect both the intentions of those involved and their willingness to participate in finding resolution.

When one considers the ever-evolving nature of condominiums and reflects upon the length of time that is required to see a dispute through to resolution using the court system, obvious challenges come to light. The more time that is required to address a condominium conflict, the less likely that all key players involved in the dispute will remain part of the community. Sometimes, this works in favour of the community - such as a violating owner selling his unit and moving on; often though, it does not - such as when key witnesses fail to remain connected to the community by the

time the matter proceeds to trial. This is not to suggest that ignoring the problem will eventually make it go away, but rather that the sheer duration of time required to see a condominium dispute through to a court-imposed resolution does not accommodate the natural progression of condominium communities. Time does march on.

Consider that at least one Annual General Meeting (AGM) will take place between the time that a condominium is typically engaged in litigation proceedings and the matter is ultimately heard. New directors can be elected to the Board and may not necessarily have the same views on how a particular issue should be addressed as their predecessors. A battle that prior directors felt was worth fighting may not be as significant to a new Board. Condominiums are political, after all. In one circumstance which our office experienced, a condominium community had individuals run for election to their Board of Directors with a view to stopping a compliance application that had been brought against them. (They were ultimately unsuccessful in such endeavour.)

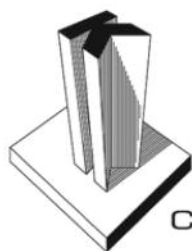
While some communities have long-term relationships with certain service providers, it is not uncommon for a variety to assist a condominium community over the course of time. I was recently contacted in respect of a condominium litigation matter that has been ongoing for over 3 years and has yet to be tried in court...by the fifth lawyer to have carriage of the file! A variety of circumstances have required so many different lawyers to have been involved in the matter yet this

serves as an extreme example of the type of change that can occur over the lifecycle of litigation.

Condominium communities are ever-changing environments and going to court is a timely process. Mediation provides an opportunity to address conflict faster and in a conciliatory manner, which can serve the best interest of the community as a whole by addressing the actual interests of those involved in conflict, preserving the relationships of those in community with each other and offering less costly solutions than those incurred in the course of seeking a resolution imposed by a judge.







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# Upcoming 2014 Events

## **Insurance: Always a Challenge**

**February 19, 2014 7:00 p.m.**

**At The Hellenic Meeting and Reception Centre**

## **How to Run an Effective Meeting**

**March 20, 2014 7:00 p.m.**

**At the Nepean Sportsplex**

Also, on **April 26-27**, we will have our **Spring Directors Course**.

The best place to educate new Directors, as well as refresh your own knowledge if you are a long-serving Condo Director, this course has become THE source of education for those involved in condominium in the Ottawa region. Always a sell-out, so make sure you reserve your spot early!

**For more information and to register for any of these events, please visit the CCI Ottawa website at: <http://www.cci.ca/ottawa/NEWS-EVENTS/events.asp>**

### **CCI-Ottawa Chapter**

PO Box 32001, 1386 Richmond Rd, Ottawa, ON K2B 1A1

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Green building tools for energy management and sustainability

The CCI Ottawa Chapter

# Insurance: Always a Challenge!



**Wednesday, February 19, 2014 • 7:00pm**

**Hellenic Meeting and Reception Centre, 1315 Prince of Wales Drive, Ottawa, Ontario (Adonis Room)**

## FEATURE PRESENTATION

**The units or the common elements have experienced damage. What do you do?**

A lawyer and an insurance broker will walk you through the process of dealing with damage, and provide some practical tips which will hopefully avoid common pitfalls.

**Nancy Houle, Condominium Lawyer**  
Nelligan O'Brien Payne

Nancy Houle is a partner and a member of the firm's Condominium Law Practice Group. Her practice includes general corporate advice to condominium corporations, financing and secured transactions, building deficiency litigation, and proceedings involving disputes between condominium corporations and residents.

**Shelley Glover, CIP, Insurance Adjuster**  
Claimspro

Shelley Glover is licensed to handle all lines of claims but specializes in property losses, specifically condominium claims.

**Seating is limited, so be sure  
to register soon!**

HST/GST #89966 7364 RT0006

## RESERVATIONS A MUST!

**Avoid Disappointment – Register Today!**

### REGISTRATION FORM

WEDNESDAY, FEBRUARY 19, 2014

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

#### Course Registration Fee



CCI Member .....\$50.00

Non-Member .....\$60.00

Number of tickets \_\_\_\_\_

13% HST \_\_\_\_\_

**TOTAL** .....\$ \_\_\_\_\_

Cheque Enclosed \$ \_\_\_\_\_ or Charge my: ☐  ☐ 

Card No. \_\_\_\_\_ Exp. Date: \_\_\_\_\_ / \_\_\_\_\_

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Signature: \_\_\_\_\_

Please make cheques payable to:



**Canadian Condominium Institute – Ottawa and Area Chapter**

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

Email: [cciottawa@cci.ca](mailto:cciottawa@cci.ca)

Phone: 1-866-491-6216 Fax: 1-866-502-1670

**For more detailed information, please visit the Chapter website at: [www.cci.ca/ottawa/NEWS/EVENTS](http://www.cci.ca/ottawa/NEWS/EVENTS)**



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