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CCI national newsletter PAGE 16

The newsletter of the Canadian Condominium Institute/
Institut canadien des condominiums / South Alberta Chapter

investors: is there money in puppy love?

by Grainne Burns

As more condo boards clamp down on animal regulations, should investors move towards pet-friendly units to maximize their rental return?

From height and weight restrictions to the number of pets allowed on each floor, condo boards are taking a harder line with animal-loving tenants. And with more renters actively looking for pet-friendly condos, investors are being urged to consider this priority before signing on the dotted line.

"We have come across cases when buyers, and in particular first-time buyers, fail to ask about the condo's pet policies and then pull out of the deal when they see the restrictions placed by the boards," says Christian Cardo, cofounder of condopuppy.com. The website lists all of the condo buildings that are pet-friendly in Toronto.

"We are finding that more people are looking for these units, reflecting the fact that a lot more people have pets. And they want the pet facilities on site to help them," adds Cardo. And with greater regulation and fewer condos being pet friendly, condo owners could demand more for the unit.

In relation to letting agreements, he says many agents do not want to discuss the issue of pets as they don't want to be liable should any issue arise. "There have been a few court cases over pets and it is still very much a grey area, with no one wanting to be held responsible if something does happen in the unit."

Reprinted from Canadian Real Estate Magazine.



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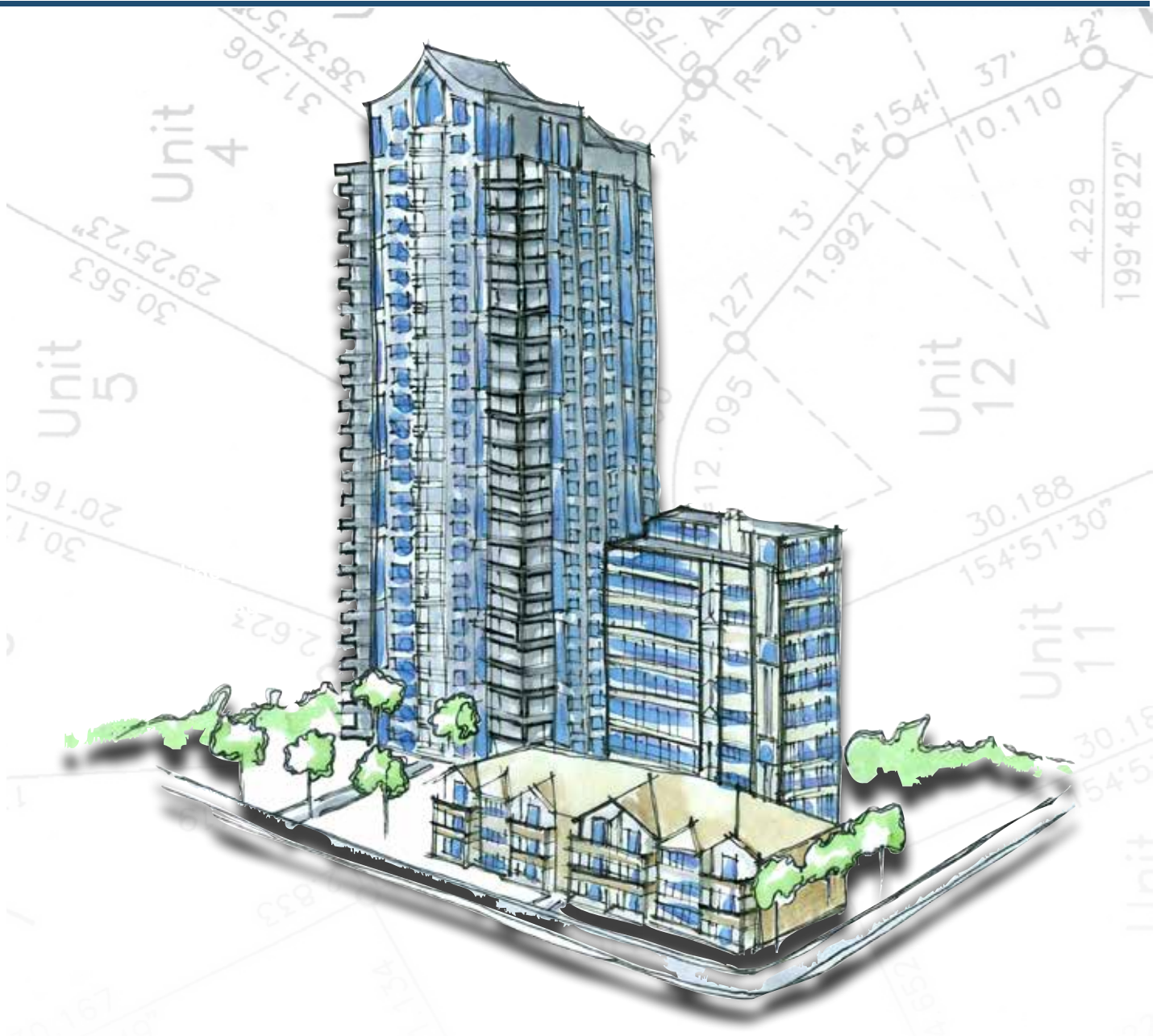
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cci-sa year at a glance

Luncheons

Annual General Meeting, September 23, 2014

October 28, 2014

November 25, 2014

January 27, 2015

February 24, 2015

March 24, 2015

April 28, 2015

May 26, 2015

June 23, 2015

Held at the Danish Canadian Club, 727 11 Ave SW, Calgary.
Registration notices are emailed to members three to four
weeks in advance.

CCI is always looking for volunteers to speak at our luncheons.
If you are interested, please contact Melanie at 403 253 9082 or
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Events

CCI, REIC and ACMA: Building Stronger Relationships Conference and Tradeshow

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June 2015

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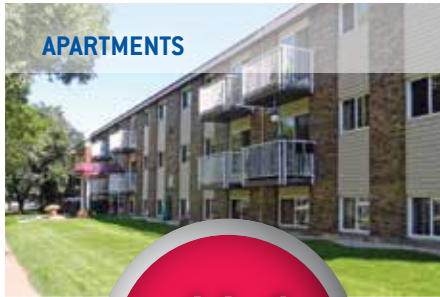
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boards of directors

conflicts of interest

What is a conflict of interest and can a board member vote?

by Maria Bartolotti, reprinted from *CondoLiving*

A conflict of interest occurs when a board member's decisions could be influenced by his/ her personal gain rather than the interest of the condominium corporation.

A good example is where a board member is rewarded a profit of some sort from a vendor who wants a lucrative service contract and the board member makes certain that the vendor is awarded the contract.

The *Condominium Property Act* states, that every member of a board shall exercise the powers and discharge the duties of the office of member of the board honestly and in good faith.

Board members are elected to make decisions and take actions on behalf of the Corporation. They are not elected to abstain. Board members need to carefully consider and vote on all matters coming before them, unless there is a conflict of interest.

Members of the board should disclose any conflict of interest. This means that they should let the board know if they have any business or personal interests in a decision that is being made by the board.

Board members with a conflict of interest cannot be included in the numbers necessary to establish a quorum for a meeting.

Board members have a fiduciary responsibility to their condo owners and, as such, must place the best interests of their community above all else including their own

Condominium Property Amendment Act to be debated this fall

On May 6, 2014, Bill 13, the *Condominium Property Amendment Act*, was introduced in the Legislative Assembly of Alberta. The bill is based on a far-reaching consultation survey, plus input from many who participated in round table discussions, conference calls and the six task teams that were assembled to discuss issues in more depth. Introduction of the bill marks a major milestone for the Condominium Property Act Review project. Bill 13 can be viewed online [here](#).

The bill addresses many issues including:

- clarification and expansion of permitted uses for reserve funds;
- a more effective and less expensive way for owners, boards and other interested parties to resolve disputes;
- better disclosure of and access to corporation records;
- better protection for Albertans who buy a condominium;
- minimum skills and standards of practice for condominium managers; and
- improved board transparency, accountability and corporation governance.

This summer Service Alberta asked stakeholders for their comments on the proposed changes to ensure that the act serves the needs of unit owners, condominium boards, industry members and potential buyers.

Debate on the details of Bill 13 is expected to take place in the fall sitting of the legislature. To learn more about Bill 13 and the results of Service Alberta's recent Let's Talk Condos condominium survey, please [click here](#). The Condominium Property Act Review Consultation Analysis report contains a summary of the responses to the consultation survey. You may also check the Service Alberta website for updates on the progress of amendments.

Save ^{the} Date

CCI-South Alberta Chapter
Annual General Meeting
September 23, 2014

Danish Canadian Club
727 11 Ave SW, Calgary, Alberta



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make a difference: join a CCI committee



As the CCI South Alberta chapter moves toward a more committee-based structure we are encouraging our members to join one of our exciting committees. Six committees are currently seeking new faces. If you feel you have the time, drive and commitment to join our committees please contact our administrator please contact Melanie at 403 253 9082 or administrator@ccisouthalberta.com.

Awards and Recognition

The Recognition committee oversees and reviews the national ACCI, FCCI and DSA award submissions, as well as local chapter awards and implementing the new Chapter of the Year award.

Communications

The Communication committee oversees and implements new initiatives in media communications, including the newsletter and website.

Education

The Education committee is involved in all educational aspects of the chapter, such as our 101, 100, 200 and 300 courses, seminars and monthly luncheons. The committee is responsible for new course development and all educational material.

Membership

The Membership committee is responsible for recruitment, membership growth incentives and retaining memberships.

Government Communications Initiative

The Government Communications Initiative committee corresponds with municipal officials in southern Alberta in order to be actively involved in changes to the New Home Warranty program and to bring forward issues pertaining to condominium living on a municipal level.

Trade Show

The Trade Show committee is working on a joint venture with with ACMA and REIC to organize a trade show for the CCI South Alberta chapter and other organizations.

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just what evils lurk under your building envelope?

condo
maintenance

Building envelope: the part of your home that separates the inside from the outside:

by Brian Shedden, BSSO

After a couple of weeks of hotter than normal weather, we are back to seasonal temps and the projects that were on the agenda last spring are still there. What to do and where to start?

You know there are white stains over there on the masonry that just seem to get worse each year, and you know about all of the calls for windows that seem to be leaking, and what about those brown stains that appeared on the top floor ceiling drywall when that chinook blew through last winter?

Instinctively, and who hasn't seen an episode of Mike Holmes on TV, the natural urge is "call the contractor!" You know, the one who did a great job on the new cabinetry in the common room.

We have some great and talented contractors in southern Alberta. Just take a look inside most homes and the craftsmanship our trades possess in interior works is second to none. The same, I must say, does not tend to occur with the trades and developers who build the exteriors of our homes.

The fact is that many of the structures built over the past 10 years are woefully deficient in the construction of their building envelopes.

What is a building envelope?

It's the part of your home that separates the inside from the outside. It might look like siding or stucco or maybe brick, but those are just the outer "skin" of the building envelope. The danger is what lies beneath these decorative skin elements, because what you can't see are that problems in behind the roofing, siding or stucco sit there and stew until the symptoms of their nefarious ways come to the surface as stains, water in the unit, etc.

By the time you see the symptom, the real problem is likely far more significant than the symptom may reveal. Predominantly moisture damage, but in wood framed construction, moisture and wood fibers can mix together to cause mould in minor situations and full blown structural failure in others.

We can take a clue from the recently revised Alberta New Home Warrantee program and the recently implemented building envelope inspection criteria by the City of Calgary. Problems in the building envelope are not just a nuisance, they are nearly epidemic and the costs to repair what looked like a perfectly good condominium last year are causing more than a few boards to reach into the special assessment cupboard once again.

The key here is to understand that the symptom is not the problem. When you take a Tylenol to get rid of a headache, it did not work because you had a Tylenol deficiency! The underlying problem is still there — just the symptom has been dealt with.

The same is true of your home. Sure, painting over that stain in the ceiling seems to make the stain go away, but the problem with your ceiling was not a lack of paint, it is a moisture-related problem above the ceiling.

So, who're you going to call?

Call a reputable building envelope consultant. Preferably one with a background in building science.

Just as you go to the doctor for your medical well-being, make sure that your home's problem is properly assessed by a trained professional who can diagnose the real problem and then aid you in getting the right contractor to carry out the right restoration prescription.

Now that you know what to do, pick up that phone or shoot off an email today!





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Email administrator@ccisouthalberta.com to renew your membership today!

making the best use of excess reserve funds

by Kevin Rendek

An increasing number of condominium boards have been requesting better options than having excess reserve funds in low-interest chequing accounts. Boards are seeking advice to better allocate reserve monies. There are concerns that there is a need to improve the process to ensure that large balances can obtain the best possible yield to best match the 25-Year Reserve Plan Study.

The prudent management of condominium reserve funds begins with understanding the eligible options available for saving and investing. Generally, all forms of bank accounts and term deposits (GICs) are the most commonly used financial products followed by investing in Index-linked GICs, principal protected bank notes, bonds, and preferred and common shares. These all represent eligible investments under the condominium property regulations.

The most critical aspect of reserve fund management is in understanding how to properly allocate assets across the listed products. It is imperative to adopt a consistent strategic plan that will constantly guide the decision making process and provide a strong measure of resilience when looking at future reserve fund expenditures. The plan must also be durable so that subsequent board changes can continue along with a good measure of competence.

Finally, limits are important tools that allow the best plans to accommodate unforeseen events and risks in planning and investing. Generally, it is a common best practice to limit bank exposure to \$100,000 per institution as this amount is insured by CDIC. Also, the property regulation defines limits to certain investments to support diversification and thus reduce risks.



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- Consultation to architects on design and construction of building envelope assemblies in new construction projects



Message from the President

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

Hello to all of our CCI members. As I write this, it is the day before Canada Day and celebrations are in their final planning stages across this great Country. The Nation is celebrating its 147th birthday. I think we all need a good party after the brutal winter we endured.

We just recently returned from our National Spring meetings in beautiful Winnipeg, Manitoba, which was held from June 5th to 7th. By all accounts, the combination of working events and social events was very well received. For those members or chapter directors who have never attended one of these events you should definitely consider doing so.

The sessions kicked off with a panel presentation on CCI membership categories and which ones really drive some of our chapters. It was clear that the size, geographic location, market environment and composition of a chapter has a lot of influence on membership composition. Evidently chapters are quite different in terms of representation in the condominium corporation, individual, business partner and professional categories. Chapter boards must not only continue to service those members they have but also attract interest from those other categories of membership which are perhaps under-represented.

The next session was a lively panel discussion on the role of education at the chapter level and whether

this education should be offered free of charge. Panelists with alternate viewpoints provided convincing reasoning to support free education, cost neutral education and education as a major revenue generator. Again, the size and demographics of the Chapters have so much influence on which viewpoint is most relevant for an individual chapter. Certainly the Chapters have to determine which model is most appropriate in their region.

Our third session was a Solutions Session for Chapters. This was a new session, offered for the first time in Winnipeg. Chapters were asked in advance to provide issues or questions which they are facing in their own areas. In the session, these issues were then drawn randomly and read to our entire group. We all then had the opportunity to offer solutions, guidance and information. This session went very well and I think all Chapters will benefit from the variety of opinions and viewpoints offered.

CCI's executive introduced a discussion on revenue models. As part of its continued review and strategic planning plans, the executive believed the time was right to get the viewpoints of Council members as to whether the current system works well, whether it should be changed, and if so, how should it be changed. A number of factors were considered. Does the current model help or hinder smaller chapters where markets and membership numbers are smaller and contributions to National form a large

part of Chapter revenues? Does the current model actually make it more difficult for chapters to attract members or provide education? In the Ontario Chapters, where the majority of our members are located, there is a very real concern that the current model could lead to loss of memberships, and therefore revenue, if new mandatory education is offered by groups other than CCI. The opinions offered in the session were diverse and will certainly guide the Executive as it continues to review revenue models.

Federal anti-spam legislation came into force July 1 and CCI Chapters and CCI National falls within the rules and regulations in terms of their communications with members, potential members and the general public. It is admittedly a complex piece of legislation but Jamie Herle and Doug Shanks offered an excellent review and summary. Chapters must be aware of the legislation and adjust their communications accordingly to ensure that they do not go offside. Serious fines could result from non compliance. A general guidance paper has been prepared by Jamie and Doug and has been circulated to all Chapters. It is also posted on our National website.

We had reported several times in the past about the development of our new National database. In Winnipeg, Daena Rundle and Bill Thompson took us through the database and answered questions on its functionality and operation. We are very excited
continued...

Message from the President Cont'd.

by this development and know it will improve the operations of individual Chapters and National as a whole. We are getting very close to going live with the new database, so stay tuned for future announcements.

I'd like to conclude by saying a very big "thank you" on behalf of the entire CCI organization to the Manitoba Chapter for planning such an excellent conference. Chapter directors and organization volunteers worked extremely hard over an extended period of time to pull it all together. Thank you as well to all the generous sponsors who offered their assistance to make the conference such a success. Social events included a tour of Fort Gibraltar and a ride on a vintage steam train at Prairie Dog Central followed by dinner at the Hitch N Post. This was really a lot of fun with several interesting surprises.

Thank you CCI Manitoba Chapter for your wonderful hospitality.

Until next time, please have a safe and happy summer!



A Short Overview of Canada's Anti-Spam Legislation

BY JAMIE HERLE, B. COMM, LL.B., ACCI
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On July 1, 2014, this country gave a birthday present to itself: Canada's Anti-Spam Legislation ("CASL"). While this might be a welcome gift for some, CASL will cause headaches for many organizations, even those which don't normally send bulk email.

CASL is perhaps the most onerous legislation in the world used to regulate the use of commercial electronic messaging. There are too many features to include in this article, but I am including a few concepts which will help explain why your inbox has been inundated with requests for consents to join/remain on mailing lists and how this law will affect you.

Unlike many other countries' anti-spam laws (including the U.S.A.), CASL is a consent-based system which rests on an opt-in foundation. This means commercial electronic messages cannot be sent until the potential recipient gives permission prior to the messaging. The consent can be written or oral but it must be documented and if oral, recorded or verified by a third party. The onus rests on the person claiming consent to prove that they in fact have consent or can rely on implied consent or an exemption.

The law applies to "commercial electronic messages", or CEM's. This casts a very wide net. Any message by telecommunication, text, sound, voice or image message, if it is reasonable to conclude that one of its purposes is to encourage participating in a commercial activity, is caught. Almost anything sent by a business will fit into this definition.

It is important to realize that this is not "messages".



A single communication can be a CEM. Just because you do not do email blasts or other high volume campaigns don't think you can ignore CASL. It is possible that a single "cold call" email to a potential customer, or potential member, can be a CEM and prohibited by CASL.

Unless you avoid email altogether you have already seen the impact of these rules. Many in Canada who want to send you electronic messages after July 1, and comply with CASL, have sent you an email or other message asking for your consent. The mechanics vary but if you did not reply with a positive consent they cannot continue to send you messages. That is, unless they fit into an exemption.

In order to allow communications to continue via e-mail CASL contains exemptions. Below is a list of a few of the exemptions:

- CEM's can be sent to family or friends
- Interactive communications
- It is OK to inquire about the recipient's commercial activity (say, asking if their product will suit your purpose)
- Likewise, there is no problem with employees of an organization communicating with employees in another organization about their respective commercial activities or where there is an existing business relationship
- Legal notices are usually alright
- Registered charities and political fundraising activities are allowed

continued...

Anti-Spam Law Cont'd.

There are also some exemptions such as warranty and safety notices, responses to requests or complaints, and updates or upgrades to a pre-existing transaction that don't require consent but the message must comply with CASL's form and content rules.

A further provision that allows individuals and businesses to continue communicating via email is the implied consent provisions which allow senders to continue to contact an individual for 2 years following the purchase of goods, provision of services or termination of a written contract and 6 months from the date of an inquiry or application regarding commercial activities, unless the recipient unsubscribes before these time periods elapse. Implied consent timelines are rolling and if you are going to rely on them proper documents must be kept to ensure that emails are only sent within the time periods.

Even with consent, express or implied, and certain exemptions, CASL contains form and content rules that change what can be shown on email subject lines and what must be in email footers. Messages cannot contain deceptive or misleading subject lines. Further, CEM's must clearly and simply identify the sender, the person or business the email is sent on behalf of, the mailing address and telephone number or email or web address of the sender AND a working unsubscribe option.

The penalties are steep, signalling people to take note of this legislation. There are administrative penalties of up to \$10 million for businesses and \$1 million for individuals. It is also important to note that the legislation breaks down the proverbial corporate curtain; directors, officers and agents who have directed, assented to, acquiesced in or participated in the violations could be held personally liable.

What about non-Canadian senders? CASL looks at the where the receiver is and not the originator. Therefore, if a non-Canadian is sending you an email it must comply with CASL. The government claims the legislation lets them cooperate with for-

eign governments to share information and enforce similar laws. Only time will tell, but I have my doubts that emails from the South African heir are going to cease after July 1.

To be fair CASL contains some transitional periods. A few of importance are: where there is an existing business or non-business relationship AND the relationship includes communication of CEM's there is implied consent for a 3 year period to July 1, 2017, unless consent is withdrawn earlier; and after July 1, 2017 people can bring private civil suits for

damages and penalties. Class action law suits could be a big threat.

CASL may be a big deal or it may end up on the heap of laws which sound great but are subject to little enforcement. Until we know, the risk of being a test case is something to avoid. Individuals and businesses that send CEM's have a very large onus and should take steps to ensure they are compliant with CASL. This article does not cover all of the ins and outs of the legislation. Be sure to talk with your advisors to ensure you are on side. 🍁



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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 — Liability of Condominium Corporations

A recent Ontario case shows that condominium corporations may be risking liability if the corporation does not enforce the governing documents. The case was about a dog bite. Here's my summary of the case:

Elbaum v. York Condominium Corporation No. 67 (Ontario Superior Court) February 26, 2014

Condominium corporation might be liable for harm caused by dog off leash

The plaintiff owned a unit in the condominium. While walking on the common elements, she was allegedly attacked and injured by a dog that was off-leash. The plaintiff sued the owner of the dog, under the *Dog Owners' Liability Act*. She also sued the condominium corporation. The condominium corporation brought a motion for dismissal of the claim against the condominium corporation, on the ground that the corporation could not possibly have any liability in the matter. The Court refused to dismiss the claim against the condominium corporation. The Court said that the condominium corporation might be liable in negligence.

The Court said:

Ms. Elbaum alleges that the Condominium Corporation was negligent because: (a) it failed to take reasonable or any steps to ensure that persons are reasonably safe while on the common elements; (b) it failed to take

reasonable or any steps to ensure that dogs are kept on a leash; (c) it failed to take reasonable or any steps to ensure that unit owners control their pets at all times while on the common elements; (d) it failed to create and or adequately enforce rules that would require that dogs are always kept on a leash; (e) it failed to create and or adequately enforce rules that would require unit owners to control their pets at all times when on the common elements; and (f) it failed to monitor, supervise, and maintain the premises in such a manner to keep aware of dogs on the common elements that may pose a danger to persons on the common elements.

...

... as I interpret the civil liability provisions of the Dog Owners' Liability Act, if the court determines that the defendant is not the owner or harbourer of the dog, then there is no strict liability, but there is also no preclusion of a common law negligence claim or a claim under the Occupiers' Liability Act.

...

Put shortly, in the case at bar, it is not plain and obvious that the Condominium Corporation could not be found liable for a common law negligence claim or a claim under the Occupier's Liability Act.

Yukon Territory Cases — **Whitehorse Condominium Corp. No. 95 v. 37724 Yukon Inc. (Yukon Supreme Court) February 10, 2014**

Developer obligated to pay common expenses on unsold units

For several years, while in effective control of the condominium corporation, the developer had not paid common expenses on the unsold units (owned by the developer). The condominium corporation subsequently liened each of the developer's units and sought judgment determining the amounts owed by the developer under the liens. The Court ruled that:

- The developer was obligated to pay common expenses in relation to the unsold units. There had been no agreement to the contrary, and the condominium corporation was not estopped from claiming the arrears.
- The amount owed by the developer should be based upon the unsold units' proportionate share of the actual expenses of the condominium corporation (during the period of non-payment), rather than based upon budgets for the same period.
- The condominium corporation was also legally entitled to recover penalties and interest, but the Court relieved the developer from having to pay the penalties.

The Court also said:

- *It is fair to the unit owners who perhaps paid more than they should have if the amount owing by the Condo Developer could be used to rebate past con-*

continued...

Condo Cases Across Canada Cont'd.

dominium fees of unit owners, create a reserve, or both. In this way, the Condo Developer is accountable to the unit owners without creating a wind-fall that would be unfair or excessive compared to the actual expenses incurred.

- *The applicable limitation period was 10 years (under s. 11(1) of the Limitation of Actions Act) rather than 6 years (under s. 2(1)(f) of the Limitation of Actions Act). The Court said that the claim for common expenses was “in effect a debt charged on land and specifically excluded from the six-year limitation in s. 2(1)(f) but covered in s. 11(1) setting out the recovery of money charged on land”*

Whitehorse Condominium Corp. No. 95 v. 37724 Yukon Inc. (Yukon Supreme Court) April 11, 2014

Court approves revised development plan

In previous decisions, the Court had enjoined the developer from proceeding with the developer's planned development for completion of the condominium. [See Condo Cases Across Canada, Part 41, February 2013 and Condo Cases Across Canada, Part 45, February 2014.] The Court had directed the developer to come up with a revised development plan that included proposed four-plexes on “Bare Land Unit A”. The developer now presented two options (A and B). The Court approved option B subject to listed conditions. The Court's decision included the following:

Option A consists of seven four-plexes with two blocks of three attached four-plexes and one detached four-plex in between. Option A provides for 28 units.

Option B consists of three attached four-plexes, three detached four-plexes and one single family unit for a total of 25 units.

The condominium corporation opposed both options A and B, primarily due to concerns about parking, landscaping and drainage. However, the court addressed those concerns in the imposed conditions.

B.C. Cases – 299 Burrard Management Ltd. v. Strata Plan BCS 3699 (B.C. Supreme Court) March 11, 2014

Strata corporation obligated to indemnify developer for payments made to concierge service contractor

The developer had entered into a contract for computer based concierge services (the “Concierge Service Contract”). The developer's intention to enter into the contract, and to then assign the contract to the proposed strata corporation, had been disclosed in the disclosure statement. After establishment of the strata

corporation, and before sale of any of the strata lots, the developer assigned the Concierge Service Contract to the strata corporation. The assignment was executed by the developer on behalf of the strata corporation.

The strata corporation refused to make payments under the Concierge Service Contract. One of the strata corporation's reasons for refusing to pay was that the developer had failed to comply with Section 20 of the *Strata Property Act*, in that the developer had failed to place before the strata corporation's first annual general meeting copies of all contracts entered into on behalf of the strata corporation – including the Concierge Service Contract and the related assumption agreement.

The concierge service contractor sued the developer for fees owing under the Concierge Service Contract. The developer settled that claim and sought to recover, from the strata corporation, the amounts paid by the developer to the concierge service contractor.

The developer's claim against the strata corporation was successful. The Court's decision included the following:

It is true that the Strata Property Act required the Owner Developer to place before the first Annual General Meeting of the Strata Corporation all contracts entered into or on behalf of the latter. . .

However, there is nothing in the Act which stipulates that non-compliance with Section 20 of the Act renders such contracts unenforceable as a matter of law. To the contrary, the Act expressly authorizes the Owner Developer to enter into such contracts on behalf of the Strata Corporation. Here, the contract was properly executed and was formally ratified by a resolution of the Strata Corporation. Under basic principles of contract law, the contract is clearly enforceable in accordance with its terms.

Wolodko v. Zhang (B.C. Supreme Court) March 25, 2014

Piano playing did not constitute a nuisance

The parties were owners of adjoining strata lots on the eighth floor of the strata property. The plaintiffs claimed that piano playing, by the defendant's son, was a nuisance. The plaintiffs had originally also joined the strata corporation in the court proceeding, and had claimed that the piano playing contravened the noise by-laws of the strata corporation. But the claim against the strata corporation was subsequently dismissed, on consent.

The Court held that the piano playing, in this case, was not a nuisance. The Court said:

The test for determining whether there is a nuisance is an objective one: It is whether a reasonable person in this specific locality would find the impugned activity to be a nuisance.

...

continued...

Condo Cases Across Canada Cont'd.

In my view the evidence is not sufficient to find that a reasonable person would conclude that the described incidents of piano playing constitute a nuisance.

In the circumstances here where:

- (a) *There are only the complaints of Mr. and Mrs. Wolodko in respect to the piano noise;*
- (b) *There is an absence of complaints regarding the Zhang unit from others in the complex, which can be contrasted with another piano-noise complaint problem in the complex arising from unit #904 in 2009, where there were several complaints of noise throughout the complex and from people residing on different floors (7th to 10th) and which complaints led to fines being imposed;*
- (c) *There are no recordings of the complained of piano playing;*
- (d) *There is the absence of any objective measures or readings of the piano noise; and*
- (e) *The plaintiffs refused to permit members of the Council to come to their unit to listen for themselves to determine if there had been a contravention of the noise by-laws.*

the case of nuisance, objectively, cannot be said to have been made out.

Christensen v. The Owners, Strata Plan KAS468 (B.C. Supreme Court) August 2, 2013

Owner's claim to recoup part of special levies dismissed

The strata corporation had charged special levies not in accordance with unit entitlements. The method by which the special levies were allocated had been approved by special resolution of the owners. One of the owners claimed that the special levies were improper. She claimed to have overpaid by \$15,319.67, not including interest and penalties.

The strata corporation agreed to repay the interest, penalties and legal fees amounting to \$2,676.88. The Court otherwise declined to adjust the special levies, and dismissed the petition.

The Court agreed that the special levies had not been charged in accordance with the Strata Property Act. The Court said:

... unit entitlement is the only way to allocate costs unless there is a unanimous resolution to change that allocation. Here, there was no unanimous resolution to change the statutory allocation.

Even so, the court dismissed the petition for the following reasons:

- (a) The special levies in question had already been paid in full by the previous owner of the unit, and had been disbursed by the strata corporation, without objection.
- (b) There was no existing or current contravention and it would not be proper, on the facts of this case, to remedy a past contravention.
- (c) The Plaintiff should be estopped from pursuing a claim at this time, after failing to object for many years.
- (d) There was no significant unfairness.

Alberta Case – Progressive Property Management Ltd. v. Condominium Plan No. 842 1517 (Alberta Provincial Court) April 4, 2014

Condominium manager entitled to compensation for breach of contract

The condominium corporation terminated the Plaintiff's management contract with two months' notice, effective July 31, 2011. The manager claimed that the termination was not in accordance with the terms of the management contract. The management contract allowed for termination of the contract on 60 days' notice, only at the end of any annual term of the contract (namely, May 31). The manager therefore claimed for ten months of lost management fees, for the period from August 1, 2011 through May 31, 2012.

The condominium corporation asserted that:

- a) The corporation had the right to terminate the contract for cause (and therefore without notice) due to the manager's poor performance;
- b) The corporation had the right to terminate the contract at any time on 60 days' notice under s. 17 of the *Condominium Property Act*.

The Court ruled in favour of the manager. The Court said:

- a) There had been no cause for termination;
- b) Section 17 of the Act did not apply because the management contract was not a "developer's management agreement". At the time the management contract had been signed, all of the units had been sold by the original developer to an arm's length purchaser for valuable consideration. That purchaser therefore did not meet the definition of "developer".
- c) The manager, however, was not entitled to recover the full amount of the lost management fees for the ten-month period. The Court said:

Here, the Plaintiff would have received the amount of \$18,637.50 for the balance of this contractual term. However, the Plaintiff would have incurred expenses in performing the Management Agreement and there was very little, if any, evidence presented on this topic, nor was there any significant cross-examination on the point. Furthermore, while the Defendant pled a failure to continued...

Condo Cases Across Canada Cont'd.

mitigate its damages on the part of Progressive, there was no evidence, cross examination or argument on the point presented by the Corporation.

I am satisfied that the proper measure of damages suffered by Progressive in this matter is equal to the total contract price, less the direct costs associated with performing this contract.

The Court estimated the manager's costs at 25% of the total management fee, and awarded judgment in the amount of the lost net profit over the ten-month period (being \$13,978.12).

Manitoba Case — Kirby v. Winnipeg Condominium Corp. No. 71 (Manitoba Court of Queen's Bench) March 26, 2014

Court action stayed pending determination of jurisdiction of the Director under The Residential Tenancies Act

The condominium corporation had liened the owner's unit for alleged losses suffered due to a frozen pipe. The owner of the unit started this action, seeking a declaration that the lien was invalid. In the alternative, the owner sought damages against the owner's tenant on the grounds that the tenant had caused the damage by leaving the window open.

The tenant asked the Court to stay the court proceedings because — this being a landlord and tenant dispute — the matter fell within the exclusive jurisdiction of the Director under The Residential Tenancies Act. The Court agreed to stay the court proceedings. The court said:

In view of the very broad legislative jurisdiction granted to the director under The Residential Tenancies Act and the very clear direction by the court of appeal in J & R Property Management in respect of the courts deferring to the jurisdiction granted by that statute where there is a landlord and tenant relationship, and even where a third party is involved, I am of the view that the director should be asked to consider whether that official has jurisdiction over this dispute under the authority of The Residential Tenancies Act.

...

In the result, I would stay the proceedings in this court and direct that the parties refer this matter to the director under The Residential Tenancies Act for an investigation and, if possible, a determination or a resolution under the provisions of The Residential Tenancies Act.

Other Ontario Cases — Middlesex Condominium Corp. No. 643 v. Prosperity Homes Ltd. (Ontario Superior Court) February 28, 2014

Developer entitled to hold a meeting to replace the Board

This is a phased townhouse condominium. The last phase was declared in March 2011. The developer still owned 19 (57%) of the condominium's 33 units. The condominium corporation had started a court action against the developer and others, seeking \$750,000 in damages for an alleged defective weeping tile system.

At the condominium's 2013 annual general meeting, a motion to approve borrowing of \$500,000 (to repair the alleged deficiencies) was defeated because the developer voted against the motion. In January 2014, the developer requisitioned a meeting for the purpose of electing a new Board, under Section 152(6) of the *Condominium Act, 1998*. The developer's intention was to take control of the Board and repair the deficiencies in a manner chosen by the developer. The condominium corporation asserted that this demand (for a meeting) was subject to a 2-year limitation period, which had expired. The condominium corporation also asserted that such an election would be oppressive, given the conflict between the developer and the condominium corporation.

The Court ruled in favour of the developer, and ordered that the requested meeting go ahead. The Court said that the normal two-year limitation period did not apply to the developer's demand (and right) to have a meeting. The Court's decision included the following:

It is not lost on me as to the impetus and driving forces behind Prosperity's request for a s. 152(6) meeting. Effectively, Prosperity wants to oust the current members of the board of directors in favour of replacing them with their own representatives who would likely be favourable to its position with respect to the remediation work required and the ongoing litigation.

...

Indeed, current members of the Board may be replaced, litigation may be stayed, and remediation efforts may proceed against the wishes of the minority. Nevertheless, while I am not adjudicating on the merits of the main action, I am not satisfied on the material filed that such control will result in further conduct that is oppressive, unfairly prejudicial, and disregards the other unit owners.

[Editorial Note: I was surprised by this decision. The developer was clearly in a conflict of interest and expressed its intention to promote its interests when in control of the condominium corporation. In my view, condominium developers are in a unique fiduciary role vis-a-vis the purchasers, and should not be permitted to vote in a way that might promote the interests of the developer over the interests of those purchasers.]

continued...

Condo Cases Across Canada Cont'd.

Stewart v. Toronto Standard Condominium Corp. No. 1591 (Ontario Superior Court) February 3, 2014

On appeal, costs in Small Claims Court matter reduced. Appeal on question of Plaintiff's request for records dismissed

The Plaintiff had sued for production of records, pursuant to Section 55 of the *Condominium Act, 1998*. The Small Claims Court had dismissed the Plaintiff's claim. [See Condo Cases Across Canada, Part 43, September 2013.]

The Small Claims Court had also awarded costs of \$2,000 in favour of the condominium corporation.

The Owner appealed. The appeal was dismissed "on the central issue regarding what constitutes a record under s. 55 of the *Condominium Act, 1998*". However, the Appeal Court reduced the cost award to \$150. The Court said:

In my view, the deputy judge erred in penalizing the applicant in costs for conduct that related to his dealings with his condominium corporation and not with respect to how he conducted himself within the proceeding that was before her.

1716243 Ontario Inc. v. Muskoka Standard Condominium Corp. No. 54 (Ontario Superior Court) March 24, 2014

Condominium lien reduced due to error in status certificate

The condominium corporation had registered a lien against the owner's unit, for common expense arrears. The owner asserted that:

- The common expenses stated in the status certificate issued to the owner were lower, and the condominium corporation was forever bound by the number in the status certificate plus any assessed increases; and
- The lien was also limited to any arrears beginning three months prior to the registration of the lien and was accordingly out of time.

The Court said that the status certificate only applied until the end of the fiscal year in which the certificate had been issued. Therefore, the condominium corporation was entitled to recover full common expenses from the beginning of the next fiscal year. As such, the owner was entitled to pay the reduced amount, noted in the status certificate, only until the end of the fiscal year in which the certificate had been issued.

The Court said:

Paragraph 9 of the certificate clearly sets out that the budget on which the common expense payment is set (a copy of which was attached to the certificate

and enclosures) was accurate, but that a new budget may result in increases which were undetermined as of the date of the certificate. Therefore, I find that the (condominium corporation) is bound by the status certificate and its inaccuracy, but only insofar as the period of time to which the certificate attaches, which in this case is the end of its fiscal year on March 31, 2012.

The Court also said that the lien was valid.

The Court said:

I rely on the Christiansen and Stryk cases for the proposition that the condominium corporation should be entitled to apply credits in the manner that they see fit by allowing the default to roll forward every 30 days. I do not find, therefore, that (the condominium corporation) is statute barred from the registration of its lien.

Given the error in the status certificate, the Court reduced the interest and costs to which the corporation would otherwise be entitled in relation to the arrears.

[Editorial Comment – In reading this decision, I noted that there was no discussion of the amount of common expenses stated in the owner's agreement of purchase and sale for the purchase of the unit. It seems to me that the normal binding effect of the status certificate might not apply if the purchaser was otherwise aware of the correct common expenses for the unit (and therefore did not detrimentally rely upon the inaccurate information in the status certificate).]

Caster v. Halton Condominium Corporation No. 377 (Ontario Human Rights Tribunal) March 18, 2013

Bed bug infestation is not a disability

The claimant, a condominium resident, suffered from a bed bug infestation. He claimed that this infestation was a "disability" and that he had been "unfairly treated, stigmatized and caused to incur considerable expense" by the condominium corporation, as a result of this disability. The tribunal dismissed the claim. The tribunal said that a bed bug infestation is not a "disability". 🍁

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Thank you to the sponsors of the 2014 Leaders' Forum in Winnipeg, MB held June 4th - 7th, 2014. It was with your assistance CCI had a fantastic event!

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CHAPTER CHATTER



North Alberta Chapter – Greetings from CCI North Alberta, I hope you are starting to enjoy the arrival of summer!

The long anticipated Condominium Property Amendments Act (Bill 13) was tabled for discussion in May. The Bill is expected to be debated and passed in the fall sitting of the Alberta legislature in 2014. CCI North Alberta will be holding a series of townhalls in Edmonton and North Alberta in the summer to better explain the new amendments and how they affect condominiums in Alberta.

CCI North Alberta held its 5th Annual Conference and Trade Show. This year a record number of delegates attended the event, which covered 16 topics. The event was a major success thanks in part to our sponsors. A special thank you goes out to our volunteer conference organizer Sharon Bigelow, the many wonderful speakers and presenters, the trade show participants, and Wade Engineering for their title sponsorship of our event.

CCI North Alberta will be hosting its Annual Golf Tournament on August 26, 2014 at the Eagle Rock

Golf and Country Club. Organized by CCI Director Rick Murti, this event keeps getting bigger and better every year. I look forward to seeing many of you at this wonderful social and networking event.

The CCI Board of Directors welcomes Roseanne Evans to our organization as a new member of our Board of Directors. We welcome her expertise in property management and accreditation/licensing into our organization.

Many thanks to our colleagues at CCI Manitoba for hosting the National Spring Conference in Winnipeg. North Alberta sent six delegates to represent our chapter. Many topics were discussed, and we learned a great deal on how to improve services to our membership.

This year CCI North Alberta will be focusing on expanding services that will add value to your membership. We will be engaging new pilot projects, and expanding out to new communities both in Edmonton, and throughout North Alberta. Many thanks to Helena Smith for spearheading the "Ignorance is not Bliss" session held in April and May of this year. We will be continuing these free introductory sessions that detail how CCI can benefit condominium corporations, businesses, and individuals and provide knowledge on condominium living to the public.

Anand Sharma
President, CCI North Alberta Chapter



South Saskatchewan Chapter – Good Day from South Saskatchewan, as I write this we are looking forward to a short summer break but keeping a watchful eye out on our next Seminars, and AGM.

Bare Land Condominiums is a topic that is on the top of many minds. But first and foremost on the minds of every Condominium Corporation is the New Amendments to the Condominium Act that took place effective June 16. Insurance, Condo Conversions, Dispute Resolution and Consumer Protection. We look forward to hosting seminars on both very interesting topics.

We are in a major membership drive, working not only on Condominium Corporations but a concentrated effort on Professionals and Business Partners. We expect to reap the results of our work by years end.

With our networking and the knowledge throughout Canada, results will be in our favour.

Gerry A. Cairns
President, CCI South Saskatchewan Chapter 🍁



UPCOMING EVENTS

North Alberta Chapter:

August 26 – Annual Golf Tournament, Eagle Rock Golf Course

South Saskatchewan Chapter:

September 2 – New Condo Regulations Seminar: What it Means to You

November 15 – CCI-South Saskatchewan AGM

Coming Soon – Bare Land Condominiums Seminar: What I Need to Know

Huronia Chapter:

September 13 – North Bay Condo Forum

October 6 – President's Club Presents: The Condo Corporation vs. Winter Weather

London Chapter:

August 8 – Annual Golf Tournament, Pine Knot Golf & Country Club

Golden Horseshoe:

November 1 – Level 300 Engineering

Toronto & Area Chapter:

September 13 – 101 Condo Course, Hotel Novotel Toronto North York

September 23 – 101 Condo Course, Best Western Otonabee Inn Hotel, Peterborough ON

September 30 – 102 Condo Course, Hotel Novotel Toronto North York

October 8 – 102 Condo Course, Hotel Novotel Toronto Mississauga Centre

November 7-8 – 18th Annual ACMO/CCI-T Condominium Conference, Toronto Congress Centre

November 11, 18, 25, December 2 – 200 Condo Course, Hotel Novotel North York

Ottawa Chapter:

September 4 – Boat Cruise, Hull Marian

September – Why You Should Attend Your AGM Seminar, details to follow

October – CCI Ottawa AGM plus Speaker, details to follow

November 29-30 – Fall 2014 Condominium Directors' Course, Hellenic Meeting and Reception Centre

Nova Scotia Chapter:

October – CM 100 – Fundamental Management Principles, details to follow

Vancouver Chapter:

September 20th – Budgeting and Maintenance; The Shadow Cabinet (1/2 day Seminars)

October 14 – Insurance (Evening Seminar)

November 29th – Strata Property Act – 15 years later; Filing Tax Returns (1/2 day Seminars)

February 7, 2015 – Contracts for Major Project; Selecting a Contractor/Consultant (1/2 day Seminars)

March 10, 2015 – Volunteers in Your Strata (Evening Seminar)

April 14 – Legal Update (Evening Seminar)

May 9, 2015 – Annual General Meetings - Revisited; Bylaw Enforcement - Revisited (1/2 day Seminars)

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.

Chapter Websites:

Vancouver Chapter
<http://www.ccivancouver.ca/>

South Alberta Chapter
<http://ccisouthalberta.com/>

North Alberta Chapter
<http://www.ccinorthalberta.com>

South Saskatchewan Chapter
<http://www.cci.ca/ssc/>

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Windsor-Essex County Chapter
<http://www.cci.ca/Windsor/>

London & Area Chapter
<http://www.cci-sw.on.ca/>

Golden Horseshoe Chapter
<http://www.ghccci.org/>

Toronto & Area Chapter
<http://www.cctoronto.org/>

Huronia Chapter
<http://www.ccihuron.com/>

Ottawa & Area Chapter
<http://www.cci.ca/ottawa/>

New Brunswick Chapter
<http://www.cci.ca/NewBrunswick/>

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<http://www.ccinovascotia.ca/>

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professionals

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