



## Record Keeping

By Linda Faulker, Mark Hambridge and Terry Gibson

**T**he shocking fires that hit Fort McMurray in May were a wake-up call for us all. If condos, or anyone for that matter, kept their records only in one place — in their homes — they could have been gone forever.

Records are particularly important for apartment style buildings. History is important! In our experience good records of a building's history add value to owners and poor records can hurt property values. Record keeping is the responsibility of the Board Secretary.

Here is what one condo has done:

**1** All historical records were scanned, including plans, specifications, engineering and financial reports and recent minutes of board meetings and general meetings.

**2** Not only pictures of documents were scanned, but documentation was made searchable by running documents through OCR (optical character recognition) software. That way a search for a specific term, name or date was almost immediate: a lot faster than going through a box or bookcase!

**3** Documentation, (excluding personal, personnel and certain financial data) was made available to

(continued on page 3) →



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## Record Keeping (continuation)

all owners through a common website, enhancing transparency of condo operations.

**4** Copies were kept off site. (Did you know that computer specialists generally recommend that you have 2 back-ups of your computer data and that you test the back-ups to make sure they work from time-to-time.) One

backup should be kept off-site or in 'the cloud'.

Some questions for Board Members:

- Is your record keeping up to standards?
- Are you still using paper?
- Do have you safe back-ups of documentation in the event of an emergency that could destroy historical records?

cci

■ Reprinted from Condo Owners Forum Newsletter #8

## Year at a Glance

### LUNCHEONS

November 24, 2016

March 23, 2017

June 22, 2017

January 26, 2017

April 27, 2017

February 23, 2017

May 25, 2017

### COURSES

#### Condominium Management 101 Course

February 16, 2017

6:00pm – 9:30pm

May 18, 2017

6:00pm – 9:30pm

#### Condominium Management 100 Course

January 14, 2017

8:30am – 4:30pm

#### Condominium Management 200 Course

March 18 & 25, 2017

8:30am – 4:30pm

#### Condominium Management 300 Course

April 13, 20 & 27, 2017

8:30am – 4:30pm

Luncheons and Courses are held at  
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## reminders

For more information on **CHAPTER EVENTS** please visit [www.ccisouthalberta.com](http://www.ccisouthalberta.com) or follow us [f](https://www.facebook.com/ccisouthalberta) [t](https://twitter.com/ccisouthalberta) [in](https://www.linkedin.com/company/ccisouthalberta)  
Registration notices are emailed to members three to four weeks in advance.

For all available  
**EVENT REGISTRATIONS** visit [www.eventbrite.ca/o/ccisouth-alberta-chapter-8097891200](http://www.eventbrite.ca/o/ccisouth-alberta-chapter-8097891200)

CCI is always **LOOKING FOR VOLUNTEERS** to speak at our luncheons. If you are interested, contact Melanie at 403.253.9082 or [administrator@ccisouthalberta.com](mailto:administrator@ccisouthalberta.com)



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|---|---|
| <ul style="list-style-type: none"> <li>• <b>FACILITY ASSESSMENTS:</b> <ul style="list-style-type: none"> <li>– RESERVE FUND STUDIES</li> <li>– TECHNICAL AUDIT AND WARRANTY REVIEWS</li> <li>– BUILDING CONDITION ASSESSMENTS</li> <li>– DUE DILIGENCE ASSESSMENTS</li> </ul> </li> <li>• <b>BUILDING ENVELOPE EXPERTISE:</b> <ul style="list-style-type: none"> <li>– BUILDING ENVELOPE RESTORATION</li> <li>– WATER/AIR LEAKAGE INVESTIGATIONS</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <b>ADDITIONAL SERVICES:</b> <ul style="list-style-type: none"> <li>– ROOF INVESTIGATIONS AND RESTORATIONS</li> <li>– MECHANICAL / ELECTRICAL INVESTIGATIONS AND REPAIRS</li> <li>– PROJECT AND CONSTRUCTION MANAGEMENT</li> <li>– SUSTAINABILITY / GREEN BUILDING/LEED® CERTIFICATION</li> </ul> </li> </ul> |
|---|---|

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condo exchange

## Hey buddy, got any spare change?

Condo residents should be aware of panhandling in their community

By Maria Bartolotti

**Q:** Dear Maria; We are starting to notice a lot of panhandling activity around the street entrances of our condo near the downtown. What's the best way to deal with this problem without making a big deal out of it?

**A:** Here is a topic that seems to get overlooked but is an important discussion point nonetheless. Panhandling.

As part of the fallout in Calgary's economic woes, panhandling has certainly become more noticeable, especially in the downtown core.

It used to be a problem confined to busy business areas in the core, but nowadays, I hear a lot of complaints about vagrants hanging around street entrances of condos asking for change. And, though most are harmless, they can give rise to security concerns among the residents and their guests.

Giving panhandlers money does not solve the problem, however, and can in fact worsen them, as numerous studies have stated.

While not unsympathetic to their plight, my best advice to condo homeowners faced with this problem is: don't encourage or reward this behaviour by giving them money.

So what can you do?

- Stop enabling — by giving money directly to a panhandler. It only encourages a destructive cycles of substance abuse and living on the street



instead of getting the help they require. It would be better to buy or offer them a meal or coffee.

- If you feel threatened by a panhandler around or in your condominium call the police and report the incident to the management company. Having surveillance cameras by the doorway and along the perimeter of the property can dissuade this type of behaviour and is always a recommended safety feature.

- Buy a copy of Alberta Street News from local vendors. Many of the vendors face barriers to employment such as

physical and/or mental disabilities, addictions, lack of education, prison records, adverse circumstances, family breakdown, loss of employment for any reason, or age. Vending papers makes it possible for a person to work for brief periods of time, or just when he or she is feeling okay because each person sets his or her own hours. The money earned gives an improved quality of life. In addition, vendors learn life skills from interacting with the public, gain supporters, and make friends.

Last but not least — it does not benefit anyone by being rude to a panhandler. Be kind with your words if you choose to engage them. Understanding and compassion go a long way in dealing with everyone. Until next time ...

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Reprinted from Condo Living Magazine



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# City of Calgary's Building Maintenance Bylaw

*By Michael Ball, P.Eng. Principal, Project Manager at Morrison Hershfield*

CCI's luncheon held on October 26, 2016 was a well-attended event where the speakers were discussing the imminent Calgary Bylaw 33M2016, otherwise known as the Building Maintenance Bylaw (BMB). Speakers included Mr. Randy Reid from the City of Calgary, Mr. Mike Dietrich of Morrison Hershfield, and Mr. John MacDougall of Scott Venturo LLP. As with any topic, different perspectives and points of view will partially dictate understanding. What I hope to do with this brief article is to provide my perspective as a professional building envelope engineer.

Below are a few facts regarding the BMB which were discussed at the luncheon:

- The BMB takes effect starting January 1, 2017.
- The owner of a building in Calgary that is both five storeys (or greater) and over 10 years old will be required to have completed a visual assessment of exterior walls and roofs, and maintain records of this review, as well as records of all maintenance performed to address any identified problems.
- The results of the visual assessment of the building envelope must be recorded on a checklist style form prescribed by the Chief Building Official, to be known as a Building Exterior Visual Assessment (BEVA).
- There is an initial phase-in period for buildings based on building age. Age is determined via information in the City's property tax assessment database. Generally, the BEVA must be completed by:

- January 1, 2018, for a building more than 45 years old as of January 1, 2016;
- January 1, 2019, for a building less than 45 years old but more than 25 years old as of January 1, 2016;
- January 1, 2020, for a building less than 25 years old but more than 15 years old as of January 1, 2016;
- January 1, 2021, for a building less than 15 years old but more than 10 years old as of January 1, 2016;
- the 10th anniversary of the date of issuance of the occupancy permit, for a building less than 10 years old as of January 1, 2016;
- the 10th anniversary of the date of issuance of the occupancy permit, for a building constructed after January 1, 2016.

- Regarding subsequent reviews, a building must be visually assessed within five years of the date of the last BEVA.
- The visual assessment of the roof and walls of a building must be performed by person(s) with sufficient education,

training, skill and experience relating to roofs and walls such that the person's visual assessment may reasonably be relied upon. The qualifications of the person or persons who performed the visual assessment must be recorded on the BEVA.

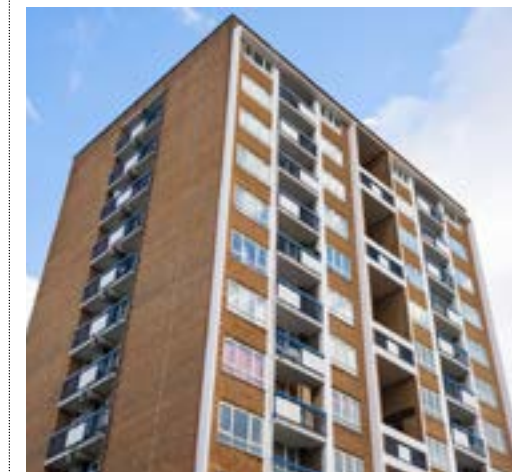
- The City will be following up with a percentage of applicable properties to confirm if a BEVA has been completed. An owner of a building must provide all BEVAs for the building to the Chief Building Official within 14 days of the Chief Building Official's written request.
- Penalties regarding non-compliance form part of the BMB.

The BMB can be reviewed in its entirety here: [www.calgary.ca/CA/city-clerks/Documents/Legislative-services/Bylaws/33M2016-BuildingMaintenanceBylaw.pdf](http://www.calgary.ca/CA/city-clerks/Documents/Legislative-services/Bylaws/33M2016-BuildingMaintenanceBylaw.pdf)

Ok, perspective time

During the luncheon there was some discussion over how the requirements of the BMB include a visual assessment

only, and is not intended to require the use of suspended access equipment (such as swing stages or rope access), nor is it intended to include any destructive testing. I would suggest that, although fundamentally correct in terms of bylaw wording, any such options should be vetted by the assessor in terms of actual building needs, and not by the definition of the BMB. For example, in the opinion of the author, it is not acceptable to review the walls of a 20-storey tower from ground level, even



with binoculars, and then declare the envelope in good condition based on lack of visually detectable problems. It is very difficult to detect shifting, bowing, and deflection in envelope elements when viewed from a distance or from an inappropriate angle / vantage point. Likewise, destructive testing on certain cladding types may be required to provide a minimum sampling size of underlying connections before a diligent reviewer can suggest that the envelope is unlikely to be a hazard.

**If a building owner treats the BMB as an inevitable cost which must be paid to buy ‘paperwork-protection’ in the event of an audit, it is undoubtable that industry will provide inexpensive avenues to follow.**


“Professional reviewers”, such as engineers and architects, will consider the fundamental limitations associated with a ground-level visual review and determine if their insurer, their profession’s governing body, and their duty to the public, will each be satisfied by undertaking such a review, even if BMB-compliant in the eyes of the City. The willingness of a professional reviewer to complete a bare bones (but compliant) BEVA checklist may be different from the willingness of other reviewers who meet the definition of a qualified person per the BMB. Professional reviewers are also likely to find a balance among themselves which they are comfortable with, and which may differ from that of their professional peers. The possible use of drones, differences in review approaches between six-storey and 14-storey buildings, and the type of cladding present will all dictate their individual professional approaches to assessments thereby making their reviews very much case-by-case and not easily adaptable to a formula as set out by the

BMB. They do this based on the above criteria such as expectations of their insurers and APEGA. The availability of appropriate liability insurance consistent with coverage for reporting on detection of hazardous conditions should be fundamental in the decision making process of a building owner when selecting a qualified assessor.

There was some discussion regarding the required 5 year frequency of the assessments, which was aligned so that condominiums (which make up a portion

of the total number of subject buildings) could select an assessor who can complete the BEVA during the generation of a Reserve Fund Study. Mr. Reid advised that it was the intent of the City to have the BEVA done as a low-cost add-on for condominiums, with — to paraphrase — no intent to have reviewers hanging from walls. This blanket statement may not be valid in many (if not most) situations. It may be that, in the case of a ten-year-old (relatively young), five-storey (comparatively low height), small footprint building with balconies (to review from during suite entries) and reasonably low-risk cladding in terms of long term stability (such as brick veneer), the assessment could be completed without significantly more effort than what is done as part of a typical Reserve Fund Study assuming the reviewers for each report are the same. However, since the approach to the assessment should (diligently) change greatly if the building is 50 years old, 25 storeys in height, with painted stucco cladding and sandstone cornices, and limited

accessible balconies, the cost of assessing the envelope for hazardous conditions increases tremendously if the assessor is to provide condition assurance in keeping with the preservation of public safety. In the case of the latter hypothetical building, the cost of providing a BEVA would arguably greatly increase the base cost of the Reserve Fund Study, and in some cases, make concurrent completion much less relevant depending on who your consultant(s) is. It is agreed that the results of any BEVA should be considered as part of the Reserve Fund Study process.

Finally, there should be some statement here about value. If a building owner treats the BMB as an inevitable cost which must be paid to buy ‘paperwork-protection’ in the event of an audit, it is undoubtable that industry will provide inexpensive avenues to follow. If, however, a building owner or Board of Directors is interested in a detailed review of their assets to provide greater assurance against public hazard, and in keeping with pro-active levels of envelope understanding and long term preservation, then consideration should be given to allocating funds towards more comprehensive, professional building envelope condition assessments with the BEVA checklist appended for BMB conformance. As always, the more relevant information available, the better, and there is value in retaining a professional for these types of reviews. The cost of the envelope assessment, since it is as a scheduled process involving review for capital expenses, can be budgeted for in your Reserve Fund Study similar to other consultant investigations and studies, thus allowing a Board to save for the expected review. In addition, if an investigation is already being done due to a known concern, often there is cost savings associated with performing a full envelope assessment with a BEVA at the same time, even if prior to the BMB’s timeframe requirements. 

## When it rains, it leaks!

*By Johnathon Bain, P.Eng., Senior Building Envelope Engineer  
at Entuitive Corporation*

Shortly after I started with Entuitive (within the first few hours, I believe), I was offered the opportunity to write an article for this newsletter with the title “When it Rains, it Leaks”. I stressed quite a bit over this as I wasn’t sure how to approach writing the article or what to say. One evening, while I was riding home from the office on my bike through the rain and the wind (don’t ask, we all make mistakes), I thought “What could I possibly write about that matches this subject?”

I thought “of course it leaks when it rains! With how we build and maintain, it’s inevitable!”

But does it have to be? Does it have to leak when it rains? No! By no means does it have to!

I have always beat the drum of an ounce of prevention is worth a pound of cure. So, what can we do to prevent leaks when it rains?

A little technical break here: Leaks are typically caused when there is a discontinuity in the building envelope. That means that there is a hole in the cladding assembly, roofing or waterproofing that is meant to keep the rain (amongst other things) out. With

**Leaks are typically caused when there is a discontinuity in the building envelope. That means that there is a hole in the cladding assembly, roofing or waterproofing that is meant to keep the rain (amongst other things) out.**



how we design these systems, there are typically two layers of protection with the outer layer, called the water-shedding plane (stucco, siding, sealants, etc.) diverting about 80 to 90 per cent of the water away and the inner layer, called the water-drainage plane

(building paper, Tyvek, flashings, etc.) diverting the balance of water out and away from the building. As water flows down hill (in most cases), these layers must be positively lapped in such a way that will direct water to flow out and away from the building. If we put a hole in any of these layers, or when the building was constructed they didn’t take care to make sure that everything was lapped properly (i.e. created a funnel for water to enter), BOOM, discontinuity and a leak.

Armed with this technical knowledge, we can now look at our buildings and get an idea of where leaks may come from, and, more importantly, how to prevent →



them. Let's start at the top.

On the roof, where would be the most likely place where we would have a discontinuity? Typically it will be at penetrations (vent stacks, drains, roof-anchors, mechanical equipment). This is because there is a hole there already. Seldom will we see a leak in the field of the roof as there is generally no hole there to begin with. So, check the penetrations for the condition of the sealant and connections. Is it cracked or loose or missing entirely? Are any locations of flashing missing and exposing the roof? Is there any water pooling on the roof near penetrations for more than 48 hours? Are there any locations where there is a hole open in the roofing or flashing that could act as a funnel for water?

With wall cladding, similar to roofing, the most likely place a leak will occur is at the penetrations. This includes the windows and doors as they are holes in the building (fenestrations really, if you are looking to add to your vocabulary!). Again, check for the

**Always check to ensure that grade is sloped away from the building and no water is standing against the building. Check to see if any of the eavestrough downspouts are directed at the foundation, rather than away and lastly, check the irrigation system.**



sealant. Also check for the flashings and ensure that they are sloped out and away from the building. Make sure that there is no water sitting on them. Further, check for water staining on the underside of the window (a mustache under the window) as this can be an indication of poor drainage away from the window. Check for anything against the cladding that could funnel water in towards the building.

As for the foundation waterproofing, this one is tough, as generally, you cannot see it. Always check to ensure that grade is sloped away from the building and no water is standing against the building. Check to see if any of the eavestrough downspouts are directed at the foundation, rather than away and lastly, check the irrigation system. For some reason, landscapers love to place the heads right against the

wall/foundation, where water is most likely to gain entry.

If any of these conditions are found, then contact a qualified contractor to repair them and prevent water from getting in and through the building. If that fails, call a building envelope specialist and we can help to resolve the issue.

So, when it rains, it leaks? It doesn't have to and you can stop it from happening. Just check that your building envelope is functioning as intended on a regular basis by using the above tips!



*Commentary in this article is intended as general guidance and is not intended as specific advice. If you have a specific issue, please feel free to contact a qualified building envelope specialist to discuss the specifics of your issue.*

**Johnathon Bain** has practiced in the building envelope field since 2009 and has completed a vast array of projects from re-roofing downtown skyscrapers to reserve fund studies on 18 unit townhouse condominium complexes. When he is not on the clock, Johnathon spends time with his wife and son, coaches youth sports, bakes, volunteers, builds, is learning to play piano and does pretty much anything he can to construct and/or create with his hands.



## Message from the President

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

You know that feeling that you get when you arrive home after an extended vacation? You know the one that I am talking about. You feel excited to be home, yet sad that the vacation is over. You know that you have a million things to do, and that reality is just around the corner. You are excited to tell your friends and family about your adventures, yet disappointed that the adventure had to come to an end.

I can only imagine that this is very similar to the feelings that must be racing through Geoff Penney's and Peter Harris' minds. They have been on an adventure with CCI. They have challenged their comfort zones and pushed their limits while serving on the National Executive for CCI.

This AGM, their adventure on the National Executive is coming to an end. Both Gentlemen (and they truly are gentlemen), will be stepping off of the Executive at the end of an extremely long and dedicated tenure, leading CCI through its rebirth and transformation from the original model, to the new streamlined Executive. They have given their wisdom, their passion, their time and a large part of their lives for the benefit of the Canadian Condominium Institute, and for that we will always be in their debt.

Their extended adventure has taken them across the country to virtually every province and allowed them to meet and befriend so many people and have so many exciting adventures, that they must

certainly be conflicted in their emotions right now. These gentlemen played hard, worked hard, and should be commended for their dedication, commitment and pure passion for CCI. Although they are leaving the National Executive, they are still valuable members and resources to CCI and will be called on often in the future I am sure. Thank you guys for everything that you have done, and will continue to do, in the best interest of CCI. It has been a pleasure working with you. You are both consummate professionals.

Another notable change coming up is the retirement of Diane Gaunt. Diane has been a foundational influence at CCI, having served CCI, first through Taylor Enterprises and recently through Association Concepts as our Executive Director. During Diane's time with CCI she has seen the growth of CCI from a fledgling association with barely a few chapters and membership counting in the hundreds, to today. Today we have sixteen chapters across the country and have members in virtually every province. Diane has been with us since there were perhaps ten thousand condominium units across Canada, to the current estimated 2.6 million units! She has seen us struggle to get in front of government and has helped us to become the leading resource for all things condominium to the public and government alike.

Her knowledge of our past has constantly been available to us to remind us where we have been,

and that "the way has already been tried", when she saw us spinning our wheels in futile efforts. Her guidance and constant nudging have kept many Past Presidents on track, and kept our volunteer forces engaged and passionate for decades.

I want to thank Diane, on behalf of all of the members for the help and leadership that you have given to us over all of these years. Diane, we wish you happiness and exciting times in your retirement, but hope that you will drop in from time to time when you find yourself looking to reconnect with some of your friends.



I also want to remind everyone that we will be saying thank you to all of these CCI difference makers on Friday October 28th at the Awards dinner which will follow the Annual General Meeting in Collingwood. Please attend if you can, and thank these wonderful people in person.

*continued...*



Message from the President  
Cont'd.

As we all know, the only constant in life is change. Change is inevitable, but it is also invigorating! Those of us who can embrace change with a smile and take on the challenge of change with an open mind will always succeed. That, in itself, is exactly what our retiring leaders have done so admirably. They have managed the changes that were inevitable for CCI to survive and to thrive in this constantly changing world.

Lastly, I want to say “Thank You” to all of the members, as I end my term as President of the National Executive. It has been my pleasure, and my honour, to represent you for the last two years. There have been some tough decisions made and some easy ones, but I enjoyed the experience and hope that you did too. I can tell you though, that I am the bigger winner here, as I received way more back than I could have possibly given. The friendships, the experiences, the perspective, and the honour of acting as your President will be with me forever. That will never change.

As the current process goes, this will be my last message to the membership, as we welcome our new President Doug Forbes. Doug is a very capable, experienced, open minded individual who will no doubt entertain you with his messages over the next two years, as he fulfills his term. Welcome Doug and I hope that you enjoy the experience as much as I have.

It feels like I should say “Good Night Johnboy” right about now...



Bill Thompson

Condo Cases Across Canada

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



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

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

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

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

THE HOT TOPIC – The decision-making authority of condominium Boards

*In a recent case, the Ontario Court of Appeal has confirmed that the “business judgment rule” applies to decisions by condominium Boards. This means that the Courts will show deference – and therefore won't overturn a Board's decision – as long as:*

- the matter decided was within the Board's mandate or decision-making authority;*
- the Board arrived at its decision in good faith, with fair process; and*
- the decision was “within a range of reasonable choices”.*

*To me, this means that condominium corporations must make reasoned decisions, or in other words they must have sound reasons for their decisions. If they do (and as long as a given decision doesn't fall outside a spectrum of reasonable choices), then the Court will generally respect and uphold the decision – whether or not the Court might have come to a different decision.*

*Here's my summary of the case:*

3716724 Canada Inc. v. Carleton Condominium Corporation No. 375 (Ontario Court of Appeal) August 30, 2016

**Appeal allowed. Court of Appeal finds no oppression and defers to decision of board of directors**

The lower court held that the condominium corporation acted oppressively in imposing a condition for approval of the owner's requested changes to the common elements. The lower Court ordered the corporation to approve the requested changes, and also held that there should be no vote of the owners pursuant to sections 97 and 98 of the Condominium Act, 1998. [See Condo Cases Across Canada, Part 54, May 2016.] The condominium corporation appealed, and was successful. The Court of Appeal found that there was no oppression; and applied the “business judgement rule” to the board's decision. The Court of Appeal said:

*Therefore, to summarize, the first question for a court reviewing a condominium board's decision is whether the directors acted honestly and in good faith and exercised the care, diligence and skill that continued...*

*a reasonably prudent person would exercise in comparable circumstances. If they did, then the board's balancing of the interests of a complainant under s. 135 of the Act against competing concerns should be accorded deference. The question in such circumstances is not whether a reviewing court would have reached the same decision as the board. Rather, it is whether the board reached a decision that was within a range of reasonable choices. If it did, then it cannot be said to have unfairly disregarded the interests of a complainant.*

*... In this case, the Board's decision had the effect of rendering the respondent's proposal less profitable. But that does not mean that the Board unfairly disregarded the interests of the respondent. The Board was entitled, indeed required, to consider the impact of the changes on the interests of other unit owners. And as the deemed occupier of the common elements of the condominium, it was also entitled to consider the security implications for users of the common elements. It did not ignore or treat the interests of the respondent as being of no importance. It simply - in good faith and after a fair process - determined that legitimate and reasonable competing interests were more important. Its decision not to approve the requested changes to the common elements unless the respondent hired a security guard was within a range of reasonable choices.*

BC Cases – Barrett v. The Owners, Strata Plan LMS 3265  
(British Columbia Supreme Court) August 12, 2016

**Court orders that schedule of unit entitlements be amended to include finished basements and finished lofts in calculation of habitable areas**

The unit entitlements were originally calculated on the basis of habitable square footage in accordance with section 1 of the Condominium Act. Unfinished basements, lofts and certain other portions of the units were not included in the unit entitlement calculations. Over time, the basements and lofts in many of the strata lots were finished; but the schedule of unit entitlements was never amended to reflect any corresponding increase in the habitable areas of those strata lots.

The petitioners were the owners of six strata lots that didn't have basements or lofts. Because common expenses are based upon unit entitlements, the petitioners asserted that the schedule of unit entitlements should have been revised (to reduce their entitlements) because of the increased habitable areas of the strata lots with finished basements. The Court agreed. The Court ordered that the schedule of unit entitlements be amended pursuant to section 246 (8) (a) of the Strata Property Act. The Court also ordered, pursuant to section 164 of the Strata Property Act, that a previous resolution passed to approve a special levy for roof replacement was to be varied to reflect the amendments to the schedule of unit entitlements.

Frank v. The Owners Strata Plan LMS 355 (British Columbia Supreme Court) June 30, 2016

**Installation of roof deck railings was a repair, not a change**

The owner had the use of a roof deck, which the Court determined to be limited common property pursuant to the Strata Plan. The owner discovered that the exterior parapet walls framing the roof deck were lower than the height required under British Columbia's Building Code. With the concurrence of the strata council, the owner began a process of obtaining the necessary permits from the City of Vancouver to install railings of the proper height. However, a dispute ultimately arose between the strata corporation and the owner respecting approval of the new railings and responsibility for the costs to install the new railings.

The Court determined that installation of the railings was necessary work. Therefore this work was not a significant change requiring approval by three quarters vote under section 71 of the Strata Property Act. The Court in fact determined that the railing installation was a repair falling within the responsibilities of the strata corporation. In addition, the Court held that the strata corporation's actions (in failing to adequately co-operate with the owner during the entire process) were significantly unfair. The Court held that the owner “had a reasonable expectation that he had the right to use and enjoy his limited common property as a roof deck”.

Alberta Cases – Condominium Corporation No. 072 9313  
(Trails of Mill Creek) v. Schultz (Alberta Court of Queen's Bench) June 17, 2016

**Court sets aside fines and costs levied by condominium corporation against owner who contravened “adults only” by-law**

The condominium corporation had an “adults only” by-law. The owner purchased a unit and moved in with a minor son. The board demanded compliance with the by-law, asking that the minor leave the condominium by July 6, 2014. The owner was not able to meet that deadline. The owner made attempts to sell without initial success. The corporation ultimately started this application to evict the minor. Before the Court's decision was rendered, the unit was sold and the eviction issue then became moot. However, the Court still had to decide further issues, namely the rights of the condominium corporation to fines and costs. The board had imposed fines (for non-compliance with the by-law) beginning January 1, 2015.

The Court held that there was no proper purpose for the board's imposition of fines. The Court said:

*continued...*

*The fines levied here appear to be pointless except, possibly, from the standpoint of deterrence. Otherwise the decision seems to be punitive and to serve no useful purpose. It might have been different if Ms. Schultz was unwilling to comply.*

The Court therefore dismissed the condominium corporation's application for fines and for recovery of costs

## Haymour v. Condominium Plan No. 802 2845 (Alberta Court of Queen's Bench) July 12, 2016

### Claims of former owner dismissed

Pursuant to previous Court orders, the condominium corporation had sold the owner's unit in order to recover outstanding arrears of condominium fees. The former owner then filed a caveat against the unit, and was permitted to bring an action to attempt to prove the claimed interest under the caveat, but subject to strict directions from the Court about the process of the action. The defendants in the action ultimately brought this motion to summarily dismiss the claims of the former owner, and they were successful.

## Waymarker Management (Silver Creek) Inc. v. Tibu (Alberta Court of Appeal) April 25, 2016

### Appeal Court confirms restraining order against condominium owner

There had been a "history of unpleasant encounters" between one of the owners in the condominium and the employees of the condominium's manager. As a result, the Queen's Bench judge had issued a permanent restraining order against the owner, ordering that she have no contact with the manager's employees.

The owner appealed. On appeal, the restraining order was upheld, but with some softening of the restrictions in order to permit the owner to pursue her property rights. The Court of Appeal said:

*Accordingly, we conclude that the restraining order must remain in full force and effect subject to the deletion of the arrest and detention provisions and that the order should also be varied to include a provision that, save in the case of an emergency, the appellant shall communicate with employees of Waymarker, including Mr. Cyr, only in writing. If for any reason employees of Waymarker are required to enter the appellant's condominium, she is to be absent and notified in writing once their tasks have been completed. To that extent only, the appeal is allowed.*

## Ontario Case – Wu v. Carleton Condominium Corporation No. 383 (Ontario Small Claims Court) April 20, 2016

### Condominium corporation had not improperly withheld records

The owner sued the condominium corporation pursuant to section 55 of the Condominium Act, 1998, for alleged failure to produce requested records. The Court dismissed the owner's claim. The Court said that the condominium corporation had provided all of the requested records apart from email addresses. In relation to the email addresses, the Court said that they should not be provided to the owner. The Court said:

I conclude that electronic addresses are not part of an address of service within the meaning of section 55.

The Court also said that the corporation had properly redacted minutes (provided to the owner) as required by section 55 (4) of the Act.

## Newfoundland and Labrador Case – Summer Services Limited v. Karwood Commercial Condominium Corporation (Newfoundland and Labrador Supreme Court) June 8, 2016

### Board failed to act honestly and in good faith in refusing consent for air conditioning

The applicant was the owner of a unit in a commercial condominium. The condominium Declaration required the Board's written consent for any alterations or repairs to a unit or for any service upgrades to a unit for air, water or electricity.

The owner asked for the Board's consent to install air conditioning. The Board gave approval, but conditional on the owner bringing itself into compliance with provisions of the Declaration respecting the permitted uses of the unit. [The Board alleged that the owner was in violation of the Declaration in that the owner's use was in competition with the core business of another owner.] The Court held that the particular condition could be imposed provided this was done with honesty and in good faith. The Court said that the Board had not acted honestly and in good faith. In particular, the Court concluded that the Board's true reasons for refusing consent were not as expressed to the owner. Therefore, the Court ordered that the owner's application for air conditioning be approved. 🍁



**North Alberta Chapter** – As the excitement builds for Captain Connor and our new arena, CCI North Alberta flies a little under the radar building our membership base and continually looking at ways to improve our product for all facets of the condominium industry.

2015-16 was a very productive year for the Chapter with just a few of the highlights listed below.

- A 20% increase in membership this past year with a total of 536 paid members.
- Substantial increases in membership engagement with our website registrations, online message forum participation and our recently created MailChimp electronic newsletter.
- Attendance at Educational events increased by 40% not including our most successful Conference and Trade Show to date which had over 500 attendees, more than double from the previous year.
- Continued involvement with the government during the ongoing Regulation amendments and with RECA through the Condominium Manager Licensing Advisory Committee.

Over the summer we held two strategic planning sessions for 2016-17 with the assistance of facilitators Nadine Riopel and Gord Sheppard. It was great to have some outside expertise to help us make some tough decisions as well as keep us focussed on the goals at hand.

Mother Nature forced us to postpone our Annual Golf tournament once but we would not be denied a second time, enjoying a fine fall afternoon at the Derrick Golf and Winter Club. Kudos to Golf Chairman Curtis Siracky for all his efforts for a record turn out and as a result we were able to make a \$1000 donation to the Edmonton Food Bank along with a large amount of food items.

## CHAPTER CHATTER

As we got back into the swing of things in September, we saw some administrative changes in the office. The Board of Directors approved a new structure in the office, creating an Executive Director position (Alan Whyte) and two part time roles of Office Administrator (Collen Peters) and Bookkeeper (Christine Schultz). Joyce Schwan our beloved Administrator these past three years, is currently on a medical leave and we wish her a speedy recovery. Our recently held AGM featured a hotly contested election for the Board of Directors with 14 candidates vying for 7 positions. We welcome back David Vincent and Shantel Kalakalo to the Board along with three members who have all had previous Chapter Board experience in Barb Surry, Dawn Mitchell and Hugh Willis. Newcomers Chris Vilcsak and Nigel Gamester bring a brand new perspective and round out the remainder of the elected slate for 2016-17. At this time we would like to thank former Board Members Jim Wallace, Susan Milner, Curtis Pruden and Jason Matthews for all of their efforts during the time they spent on the Board.

Like our hockey team, we look forward to continue to build on the momentum we have created for even more successes in this upcoming season. We will compare report cards in the (late) spring of 2017!

*Alan Whyte, Executive Director  
CCI North Alberta Chapter*



**Eastern Ontario Chapter** – As the season's change, the Nation's Capital and the Eastern Ontario region shines with the changing of the leaves and very vibrant colors.

CCI Eastern Ontario has been a very busy chapter and we need to thank the hard working CCI-EO board of directors for their time, commitment and dedication to making this chapter so successful. The board has

been listening to its members and offering many different educational, networking and social opportunities. The big change was the elimination of fees to members for seminars. CCI-EO offers 6 seminars a year and the board felt it was important to get as many members out free of charge. We have had a successful line up of courses and the number of attendants keeps growing. Just last week we hosted a "Night with the experts". Seven industry professionals rotated on a speed dating theme and had the chance to talk and discuss the burning issues with 75 members who were engaging and eager to discuss and listen to the concerns they are facing.

Our Newsletter has been an example of incredible insights from professionals in the community and the industry. Our Newsletter editor has been very instrumental in addressing the issues with huge success. Our spring issue took on a change and became themed based. The spring issue was based on smoking and odours in Condos. The summer issue was based on Ageing and on Ageing Condominiums. Both issues were so well received that we are going to continue on the themed issue idea and the fall publication will be focused on the concerns of New Condominium and all that they face.

In November we are hosting our Weekend Director's Course. This event always sells out and provides comprehensive information and guidance to Condo directors and management groups. Attendants walk away with knowledge and a new understanding of the importance of staying educated and informed. We offer this weekend course twice a year, plus we have added on a full 1-day Director's Course in Kingston. Again, the goal is to reach out and help inform and educate our members.

Our winter line up of courses will meet the continued needs of our membership. January will kick off the New Year with the very popular "Lawyers, Guns and Money". In February, the new seminar "Security, Not just a Lock on the door" will be launched. This seminar tackles many topics, including security in the building, around the building, safety in the parking area, issues with Airbnb and much more.

*continued...*



Chapter Chatter Cont'd.

Our March seminar is titled “No Reservations about Reserve Funds” and April’s seminar is targeted on “Accounting and Budgeting”.

We are also very involved with and work closely with ACMO – this past spring offering a very successful ACMO/CCIEO conference in May in Ottawa and we are preparing for another successful Conference in Kingston in November.

CCIEO went Green this year and that has allowed us to double our reach, and hopefully reach more members and their boards in the future.

Social media is our newest avenue and we are working hard to stay ahead on Twitter and LinkedIn. Please follow us.

“Get involved, stay informed”

Julie Klotz, Administrator  
CCI Eastern Ontario Chapter

MARK YOUR CALENDARS!!

We are already getting ready for our **Spring 2017 Leaders’ Forum**, when we will be packing our bags and heading to the home of our newest chapter:

**FREDERICTON, NEW BRUNSWICK!**

Plan to join us at the **Delta Fredericton** from **June 7-10, 2017** to enjoy CCI education AND some Maritime Hospitality!



You won’t want  
to miss it!

UPCOMING EVENTS

Eastern Ontario Chapter:

- October 19 – AGM and Seminar – Ottawa
- November 19&20 – Fall Directors Course – Ottawa
- November 25 – ACMO/CCI Kingston Conference - Kingston

Golden Horseshoe Chapter:

- October 22&29 – Level 200 course – Kitchener
- November 26 –Level 300 Course – Stoney Creek

Huronian Chapter:

- October 29 – Insurance Seminar - Collingwood

London & Area Chapter:

- Nov 5&12 – Condominium Course – London

Manitoba Chapter:

- October 20 – Lunch n Learn: Preventative Maintenance: Pay A Little Now or A Lot Later! – Winnipeg
- November 17 – Seminar: Insurance – Water is the New Fire - Winnipeg

New Brunswick Chapter:

- October 25 – Directors’ Forum - Fredericton
- November 5 – AGM and Seminar – Fredericton

Newfoundland & Labrador Chapter:

- November 22 – Seminar: Mediation Workshop for Directors – St. John’s

North Alberta Chapter:

- October 19 – Seminar: Better Budgeting – Edmonton
- November 9 – Seminar: Ask The Experts – Insurance Panel – Edmonton
- November 17 – Lunch n Learn: Flood Prevention - Edmonton

North Saskatchewan Chapter:

- October 20 – AGM and Seminar – Saskatoon
- November 17 – Seminar: Topic TBA – Saskatoon

Nova Scotia Chapter:

- October 22 – 200 Level Course – Halifax

South Alberta Chapter:

- October 20 – Level 200 Course - Calgary
- October 26 – Lunch n Learn – Calgary
- November 24 – Lunch n Learn - Calgary

Toronto & Area Chapter:

- October 20 – TwitterChat: Security in Condos
- November 11&12 – CCI-T/ACMO Conference - Toronto

Windsor Essex County Chapter:

- November 16 – Seminar: Director/Owner Responsibility: Financial Management in Condos – Windsor

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

Condominium Corporations  
vs. Homeowners Associations:  
How they differ

By Jamie Polley and Stephanie Whyte

Many do not understand the differences between Condominium Corporations and Homeowners Associations.

It is important to note that Homeowners Associations and Condominium Corporations are separate legal entities with separate rights, responsibilities and available remedies. Homeowners Associations are not restricted to condominium developments. A Homeowners Association can exist and operate independent of any relationship with a Condominium Corporation.

An owner of a condominium will have financial responsibilities to the Condominium Corporation. An owner of property within a Homeowners

Association will have financial responsibilities to the Association. In condominium projects where the owners are also members of a Homeowners Association, the owners will have separate and distinct financial responsibilities to each. Unless the Condominium Corporation assumes responsibility to pay Homeowners Association fees on behalf of its owners, payment of condominium fees will not satisfy the independent obligation to pay the Homeowners Association fee. Payment of property taxes to the City has no impact on an owner’s fee obligation to either the Condominium Corporation or the Homeowners Association.

Participation in Condominium

Payment of property taxes to the City has no impact on an owner’s fee obligation to either the Condominium Corporation or the Homeowners Association.

Corporations or Homeowners Association is not voluntary. You will be a member in either simply by virtue of where your home is located, and could be a member of both. There are many similarities →





between Condominium Corporations and Homeowners Associations, with both imposing financial obligations upon the owner of a property. There are also many differences and again, satisfying your obligations to one does not mean that you are in good standing with the other.

A Condominium Corporation is created upon registration of the Condominium Plan with the Land Titles Office. It operates pursuant to the provisions of the Condominium Property Act. It is not a company or corporation in the strictest sense, but rather a form of communal living with Owners making up the membership.

The Corporation will be responsible for the control, management and administration of common property and may have other obligations or responsibilities placed on it through the Bylaws. The Bylaws of the Corporation can be amended by special resolution of the owners which requires approval

by 75 per cent of owners representing at least 7,500 unit factors. Accordingly the responsibilities of the Corporation for maintenance and repair can be expanded or diminished by Bylaw amendment.

The Corporation must provide financial statements to the Owners on a yearly basis with a budget outlining anticipated common expenses, but there is no requirement for the annual returns to be filed. The operating expenses of the Condominium Corporation are paid through contributions made by the Owners and the Corporation must have a reserve fund to cover major repairs and replacement that is necessary as property ages. In the event an Owner fails to provide payment of their contributions, the Corporation may register a Caveat on title which is the equivalent of an

## The specifics of the duties and responsibilities of the Association relating to maintenance and repair will be outlined in an agreement between the Association and all homeowners which agreement will be registered on title to each property.

equitable mortgage at law. Thereafter the Condominium Corporation has all the rights and abilities that a bank would have to pursue collection, including foreclosure proceedings. The documents of the Condominium Corporation, for instance the Bylaws and the Condominium Plan, are registered with and found through the Land Titles Office.

A Homeowners Association is created by the developer of a community at the beginning of the development. It is incorporated as a not-for-profit Company under the Companies Act or Society under the Societies Act.

Usually the Homeowners Association concept is utilized to have it assume responsibility for maintenance and control of common lands within the community, often with the main purpose being beautification of the community. In addition the Homeowners Association can take on additional responsibilities relating to individual lots or condominium units within the project. The intent is to maintain the community at a high standard. Examples include community signage, entrance features, water features, amenities centres, parks, landscaping, snow removal, and can

include lakes though the lake can be a separate entity in some communities.

The purpose for which the Homeowners Association was incorporated and the procedures by which it operates will be outlined in the Articles of Association and the Bylaws. The Bylaws will create the financial responsibility of an owner to pay fees to the Association and an Encumbrance will be registered on title as security in favour of the Association for fee payment.

The specifics of the duties and responsibilities of the Association relating to maintenance and repair will be outlined in an agreement between the Association and all homeowners which agreement will be registered on title to each property. This agreement is signed when the developer is the owner of all individual properties and all subsequent owners will be subject to the agreement. Unlike a Condominium Corporation these duties and responsibilities can only be changed by amendment to the agreement which requires unanimous consent of all owners within the Association.

In the event an Owner fails to provide payment of the fees owed to the Homeowners Association, like the Condominium Corporation, the Encumbrance gives the Association the equivalent of an equitable mortgage which gives the Association the same rights and remedies as a bank.

The Association has similar obligation as a Condominium Corporation regarding budgets, annual financial statements and annual general meetings. Unlike a Condominium Corporation a reserve fund is not a mandatory statutory requirement. Reserve fund requirements may be outlined in the Articles of Association and Bylaws. The documents of the Homeowners Association, for instance the Articles of Association and Bylaws, are registered with and found through the Corporate Registry.

For further information about this or other issues relating to Condominium Corporation or Homeowners Association living please contact one of the authors or another member of our Condominium Law Group.

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## MAKE A DIFFERENCE: Join a CCI Committee

**A**s 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 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 is responsible for building relationships with local, municipal and provincial government bodies, as well as responding to their needs.

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

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## Reserve Fund: Protect, then Grow

By Trevor Galon at Matco Financial

**T**he Board of a condominium corporation has many roles and responsibilities. These can ultimately be summarized with two primary functions:

- Maintain the common property and assets of the Condominium Corporation;
- Enforce the bylaws of the Condominium Corporation.

However, when you look beneath the surface of these two main functions, the list of duties becomes much more extensive.

- Prepare an annual budget;
- Collect monthly contribution;
- Maintain accounting records;
- Attend board meetings;
- Ensure adequate property and casualty insurance is in place;
- Arrange site maintenance services;
- Respond to emergencies;

- Handle complaints by owners, tenants and surrounding community members.
- In order to accomplish this demanding list of tasks, resources are required.

In Alberta, all condominium corporations are required to establish and maintain a reserve fund to cover the costs of major repairs to or replacement of capital property. As one of the most valuable resources, it is important to ensure the reserve fund is being properly managed and maintained. When properly managed, the condo board can focus on other responsibilities while still ensuring that the monetary contributions made by unit owners are maximized in terms of a return on their investment.

The two crucial components of managing a reserve fund:

- 1) Proper preparation of a Reserve Fund Study.
    - Reserve Fund study is a document that assess all of the common property and the current funding of a condominium corporation.
  - 2) Proper management of Reserve Fund Assets.
    - Ensuring safe care of Reserve Fund Assets and maximizing return on investment.
- Given the extensive list of responsibilities a condo board and management team are subject to, hiring an investment management firm can make certain the reserve fund is being utilized to its full capacity.

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## cci south alberta chapter members

### CONDOMINIUM CORPORATION MEMBERSHIP AS OF OCTOBER 24, 2016

Agora Condominiums	Evergreen Village	River Ridge Estates
Aviara	Fairway Greens	River Run 1
Carefree Resort on Gleniffer Lake	Fairway Village	Rutland Mews
Chaparral Pointe Adult Condominiums	Fletcher Village	Sandpoint Park
Chaparral Estates	Fairmont Villas	Scenic Acres
Christie Point	Gladstone Village	Sierra Morena Villas
Churchill Manor	Grandview Village	Sierras of Country Hills
Cimmaron Pointe	Glenbrook Meadows	Sierras of Evergreen
Citadel Heights	Hardwood Estates	Sierras of Tuscany
Coach Bluff Villas	Henderson Estates	Sierras of Richmond Hill
Coachway Green	Heritage Heights	Sheepcreek View
Colonial House	Heritage Manor	Sol of Sunnyside
Condominium Plan 0410103	Heritage Terrace	Stella Nova
Condominium Plan 9210296	Hillhurst Tower	Storybook Village
Condominium Plan 9412387	Holly Springs	Sundace Estates
Condominium Plan 0312860	Horizon Village	Sunridge North Business Park
Condominium Plan 0713943	Harvest Court	The Curve
Condominium Plan 0513473	Lowery Gardens	The Estates at Terrace View
Condominium Plan 9010136	Madison on Main	The Homesteads
Condominium Plan 8810578	Mount Pleasant Court	The Mansions at Prominence Point
Condominium Pan 0113543	Norwood Grande	The Mesa at Crystal Shores
Condominium Plan 9512876	Oakhampton Court	The Renaissance at North Hill
Condominium Plan 9710247	Orchard Place	The Tudors at the Landings
CP 0711357	Park Place	The Windtower Lodge & Suites
CP 1312609	Parkside Place	The View at Sunrise
Country Lane RV Park	Pencross Condominium	Varsity Towers
Country Lane – Lethbridge	Pine Pointe Place	Varsity Villas
Coulee Estates	Prairie Sound Townhomes	Waterfront Tower B
Courtyards	Prince of Peace Village	Westchester Pointe Garden
Clarion House	Poplar Green	Whitehorn Village Retirement Residence
Dorchester Square	Redberry Ridge Condominium	
Eau Claire Estates	Riverbend Terrace “B”	
Edgepark Villas	Rocky Ridge Villas	

### INDIVIDUAL MEMBERSHIP AS OF OCTOBER 24, 2016

Joseph Awodutire	Linda Faulkner	Tom Morgan
Tracy Barbas	Terry Gibson	Claudia Perdomo
Warren Barker	Mark Hambridge	Gayle Phillips
Neil Belcher	James Kelly	Jennifer Plumb
John Burton	Marvie Kenny	Barry Rosenfelt
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Janice Charnstrom	Robert MacLeod	Wylie Shanks
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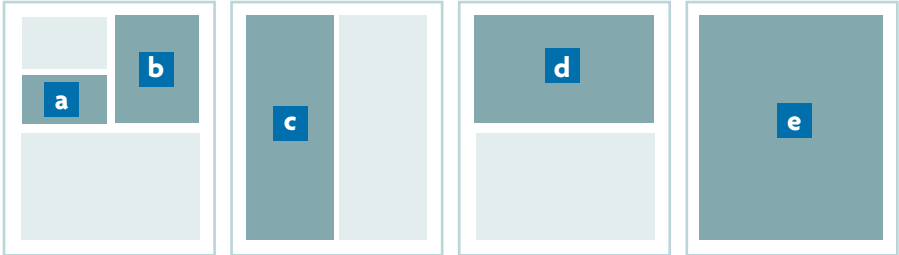
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