THE LAST WORD: Condominium Authority Tribunal – Then and Now
ON THE LINKS: CCI Toronto's Second Annual Golf Tournament

Condovoice

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15

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MTCC 1272, or 'The Beach Condominiums' as her residents refer to their three storey community, turns twenty-five years young this year, having opened in 1999

26

In This Issue

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President's Message

Until Next Time

I can't believe how time flies! This is my last official "President's Message" for CCI Toronto. At our AGM on October 24, I passed the reigns on to Brian Antman (current Vice President) and was re-elected so that I will have the pleasure of sitting for at least one more term as Past President. I look forward to the opportunity to pass along all that I have learned.

I often struggle with writing this message – it takes a lot of thought to know what to say with so much going on all the time, but this time things are very clear.

IT'S OUR 35TH ANNIVERSARY!! Our AGM this year involves a gala event to help us kick off our celebrations. Stay tuned throughout the year to see how else we will be celebrating this occasion.

Second, we have some sad goodbyes (or maybe see you laters?) this year.

Murray Johnson, long-time board member, past President, and the face of "Your Condo Connection" is leaving the Board. Being the gentleman that he is, he is stepping down to ensure that others have an opportunity to participate. I've known Murray for over twenty years, and for me it's hard to imagine CCI-T without him at the Board room table. Goodbyes are hard. We will miss you Murray.

Steve Ilkiw, our marketing guru, is also moving on to pursue other opportunities. Steve obviously hasn't served on the Board as long as Murray has (has anyone?), but his contributions have been significant. We will miss his friendly but action-oriented approach to getting things done. Thank you Steve for all your work.

We also have some friendly hellos! Our Board recently engaged Theresa Place Media Inc. to provide administrative support to the Chapter. Those familiar with other CCI chapters across Canada may already know Theresa and her team. We look forward to collaborating with them, implementing fresh ideas, and building greater success for our Chapter in the future. Cheers to new beginnings!

Lastly, and on a more personal note, I was shocked earlier this year when I received very serious news about my health. It was necessary for me to take most of the summer off to find my way back to wellness. I am back, better than ever, but taking the time I needed to recover would not have been possible without the support of my fellow Board members, who jumped into action and kept the business of CCI-T running while I was off. Brian Antman got a great crash course in the role of President! Enormous thanks to my peers during what was a very difficult time in my life.

Although I knew this already, my illness reminded me why community is so important. The condo communities we serve, the community we find in each other at CCI-T, and getting involved in our own local communities. I really look forward to seeing new faces on the CCI-T Board this winter, and what we will accomplish next year. Until next time …

Lyndsey McNally, President, CCI-Toronto
OLCM, LCCI, CCI (Hon's)

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Condovoice

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If you are interested in writing articles for Condovoice magazine, please contact Devyn Maybee at 289-230-9329 or condovoice@ccitoronto.ca

Article topics must be on issues of interest to Condominium Directors and must be informative rather than commercial in nature.

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Editor's Message

Reflecting on 35 Years of CCI

This year marks the 35th anniversary of the Toronto Chapter of the Canadian Condominium Institute (CCI), and we proudly celebrate our journey as the leading organization dedicated to condominium education, professional support, and legislative representation.

Condominium Education:
Since our founding in 1989, CCI Toronto has been committed to being the premier source of condominium education. We offer a variety of comprehensive courses, seminars, and resources designed to equip board members, condo managers and owners with essential knowledge of everything condominium.

Our award-winning Condovoice magazine serves as a vital platform for sharing expertise and best practices within the condominium community

Our award-winning Condovoice magazine serves as a vital platform for sharing expertise and best practices within the condominium community. Covering a wide array of topics, including changes in legislation and regulations, managing reserve funds, accounting best practices, insurance issues, and a wide array of advice from seasoned condominium service providers.

We have introduced our morning webinar series, "Coffee with the Experts," featuring panels of leading professionals—from engineers to financial experts—who answer questions on various condominium issues. Additionally, our established video library offers informative series on topics like caselaw updates, complementing resources from CCI National and serving as a valuable tool for ongoing condominium education.

Professional Support:
CCI Toronto is dedicated to connecting members with industry professionals and experienced service providers, offering valuable opportunities to navigate the challenges of condominium living. Our CondoSTRENGTH Program, designed by directors for directors, hosts free networking events and provides an online toolbox of resources. It empowers directors to share experiences and foster collaboration. CCI Toronto also organizes social events, such as an Annual Golf Tournament, to enhance community building.

A highlight of our year is the annual Condo Conference, co-hosted with the Association of Condominium Managers of Ontario, taking place this year on November 15 & 16 at the Toronto Congress Centre. This event gathers a diverse group of condo industry stakeholders including board members, professionals, condominium managers and service providers. In 2023, the Condo Conference drew over 2,000 attendees, providing opportunities to connect with industry leaders and learn about the latest trends and practices through educational sessions.

Legislative Representation:
CCI Toronto has consistently advocated for condominium directors and owners, ensuring their voices are heard in legisla-

– continued on page 9

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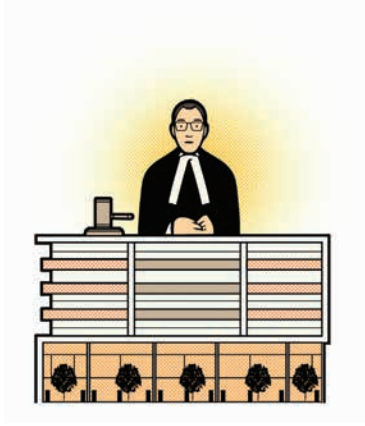
Case Law Update

Decisions From the Courts



Owner/hoarder condemned by court for allowing dangerous conditions to exist in his unit • Owner required to cease threatening behaviour • Court finds no-pet rule reasonable

Niagara North Condominium Corporation No. 127 v Chyplik, 2023 ONSC 4856
Mr. Chyplik, an owner of a unit in Niagara North Condominium Corporation No. 127 (the **"Corporation"**) was a hoarder and stored excessive materials in his unit, including combustibles, which posed a risk of fire and prevented access to the kitchen, among other dangerous conditions.

Following an inspection by St. Catharines Fire Services, an order was issued against the Corporation and Ms. Chyplik to reduce materials stored in the unit.

Thereafter, the Corporation's engineers inspected Mr. Chyplik's unit and identified further dangerous conditions in the unit, including exposed pipe chases and shafts throughout the unit resulting in smoke/odour migration, exposed wiring, renovations undertaken without building permits and excessive piles of items stored throughout the unit, among other things.

The Corporation demanded that the owner comply with St. Catharines Fire Service's order, rectify the issues identified by the Corporation's engineers and restore the unit to its original condition.

Unfortunately, the owner failed to make any remediation efforts within a reasonable time. The Corporation commenced a compliance application against the owner pursuant to section 134 of the *Condominium Act, 1998* (the **"Act"**) for an order to remediate the dangerous conditions in the unit. The Court found that the conditions in the owner's unit were likely to increase the risk of fire, hazard and risk of injury to others. The Court noted that the Corporation itself is potentially liable for such hazards if it did not take steps to remediate them. The Court condemned the owner for not resolving the dangerous conditions in his unit and found that the owner was in breach of section 117 of the Act by permitting dangerous conditions to persist in the unit. The Court awarded costs of $7,500 to the Corporation on a full indemnity basis.

Toronto Standard Condominium Corporation No. 1899 v Devlin, 2024 ONSC 2063
By way of background, in the spring of 2023, Ms. Devlin, an owner of a unit in Toronto Standard Condominium Corporation No. 1899 (the **"Corporation"**), started to disturb, threaten, intimidate, and harass residents, staff and the board of directors of the Corporation. The Corporation became concerned and commenced a compliance application pursuant to section 134 of the *Condominium Act, 1998* (the **"Act"**) for an order requiring Ms. Devlin to cease any threatening or harassing behaviour. The Corporation was successful in obtaining the compliance order against Ms. Devlin.

Unfortunately, Ms. Devlin breached the Court's order by assaulting a neighbouring unit's housekeeper with a sharp object, causing her bodily injury.

In response, the Corporation sought a Court order requiring Ms. Devlin to vacate and sell her unit. Ms. Devlin did not file any responding material to explain her conduct, nor did she appear at the hearing of the motion.

The Court noted that section 117 of the Act obliged the Corporation to ensure that no unsafe condition, or activity that is likely to cause harm to persons or property, is permitted to continue in a unit or the common elements. Further the Court noted that if a person does not abide by the terms of a compliance order, that is strong evidence that they are not willing to abide by the legal obligations that attach to living in a condominium community. How a person responds to a compliance order sheds significant light on whether the Court can expect that person to govern themselves in the future.

As such, the Court found that Ms. Devlin's presence in the building poses a real and significant threat to the health and well-being of the residents. In the absence

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of any explanation from Ms. Devlin, the Court found it appropriate to order Ms. Devlin to vacate and sell her unit within 90 days. The Court awarded costs of $20, 174.71 to the Corporation on a full indemnity basis.

York Condominium Corporation No. 327 v Scotti, 2024 ONSC 2044

Mr. Scotti, a resident in York Condominium Corporation No. 327 (the **"Corporation"**), has schizophrenia. For 25 years, while living in the Corporation, Mr. Scotti managed his mental health with medication. In 2019, Mr. Scotti chose to stop taking his medication. Mr. Scotti's mental health began to deteriorate, and he started to act out on the Corporation's property by arguing with residents and making undue noise.

The Corporation became concerned and commenced an application under section 134 of the *Condominium Act, 1998* (the **"Act"**) seeking an order prohibiting Mr. Scotti from residing at the Corporation or entering upon the common elements.

Although the Court found that Mr. Scotti breached the Corporation's declaration and rules and the Act, the Court was not satisfied that it was appropriate to prohibit Mr. Scotti from residing in the Corporation or entering upon the common elements for the following reasons: (1) Mr. Scotti resided without incident at the Corporation with diagnosed schizophrenia for 25 years; (2) Mr. Scotti's misconduct was caused by his mental illness; while not an excuse, it certainly served as an explanation; (3) Mr. Scotti has now resumed his medical treatment; (4) Mr. Scotti's mental health was improving, and he was compliant with his medical regime; (5) Mr. Scotti complied with an earlier order of the Court and the Court was confident that he will do his best to comply with future orders; (6) Mr. Scotti was the sole caregiver for his elderly and ill mother; and (7) the Corporation had a duty to accommodate pursuant to the Human Rights Code.

Accordingly, the Court ordered Mr. Scotti to comply with the Act, and the Corporation's declaration and rules, but declined to award any further relief to the Corporation.

Waterloo North Condominium Corporation No. 37 v. Baha et al., 2024 ONCAT 131

Ms. Baha and her partner, Mr. Murphy, kept two dogs in their unit, contrary to the rules of Waterloo North Condominium Corporation No. 37 (the **"Corporation"**) which permitted only one dog per unit.

Initially, the Corporation alleged that the dogs were barking excessively, resulting in unreasonable noise that created a nuisance contrary to section 117(2) of the *Condominium Act, 1998* (the **"Act"**) and the Corporation's rules.

The dispute later evolved into whether Ms. Baha and Mr. Murphy should have an accommodation pursuant to the *Human Rights Code* (the **"Code"**) and therefore be permitted to keep a second dog in their unit. Ms. Baha claimed that the second dog was necessary for Mr. Murphy due to disability.

The Corporation commenced an application before the Condominium Authority Tribunal (the **"Tribunal"**).

The Tribunal found that the Corporation had failed to establish that the barking from the dogs constituted unreasonable noise or a nuisance. The Corporation's evidence relied heavily on complaints from a single neighbor, with no corroboration from other residents. Additionally, the Tribunal ruled that Mr. Murphy had provided sufficient medical documentation supporting the necessity for the second dog as a service animal, noting that "dogs are not widgets" and each person's accommodation needs are unique, in line with the principles of individualization under the Code.

Ultimately, the Tribunal dismissed the Corporation's application, stating that the Corporation "became too entrenched in its position, too focussed on enforcement of the strict letter of its rules without due regard to the Code accommodation principles." The Tribunal also noted that the Corporation had failed to reasonably exercise its discretion under its own rules regarding service animals and accommodations.

In addition to allowing both dogs to remain in the unit, the Tribunal awarded $15,000 in damages to Ms. Baha and Mr. Murphy for the stress and disruption they suffered, including their temporary relocation from the unit. The decision underscored that the Corporation's refusal to accommodate Mr. Murphy's disability had caused harm and was a violation of the Code.

Chown v. Frontenac Condominium Corporation No. 19, 2024

Ms. Chown was a unit and former member of the board of directors of Frontenac Condominium Corporation No. 19 (the **"Corporation"**). The Corporation's by-laws and rules prohibit animals and pets in the building. The Corporation had been a pet free building since 1988.

Ms. Chown challenged the reasonableness of the Corporation's by-laws and rules prohibiting pets in the building and commenced an application before the Condominium Authority Tribunal (the **"Tribunal"**).

The Tribunal found that the Corporation's

Editor's Message

– continued from page 5

tive matters. Our Legislative Committee collaborates closely with the provincial government, other CCI Chapters, and stakeholders to present recommendations for improving condominium legislation, including the Condominium Act, 1998. Through these efforts, we have helped influence legislation that protects the interests of our members and stakeholders in the condominium industry.

As we reflect on 35 years of commitment to education, professional support, and legislative representation, we remain dedicated to connecting, educating, and representing the condominium community. Together, we will continue to shape a thriving future for condominium living.

Brian Horlick,
B. Comm, BCL, L.L.B., ACCI, FCCI

declaration registered in 1987 was silent on the issue of pets. However, By-law No. 4, registered in 1988, prohibits pets, and Rule 6.1 reaffirmed that "no animals shall be kept or allowed in any unit." The Tribunal noted that while the declaration did not explicitly prohibit pets, it certainly did not allow them, making it reasonable for the by-laws and rules to govern this issue. In its decision, the Tribunal emphasized the "business judgment principle".

Ms. Chown's argument focused on her desire to change the Corporation's no-pets status, and she relied on the case of *215 Glenridge Ave. Ltd. Partnership v. Waddington* to argue that a blanket prohibition on pets is unreasonable. However, the Tribunal found that the Corporation had followed the proper process, including surveying owners about their views on pets, and the board acted within its authority in maintaining the no-pets rule. The Tribunal found that the board was entitled to deference under the business judgment principle.

The Tribunal dismissed the application, concluding that the Corporation's by-laws and rules prohibiting pets were reasonable given the building's history, small size of the building, and the board's duty to manage the property's affairs in the best interests of the community. The Tribunal also declined to award any costs, noting that both parties had contributed to the lengthy process and that the Corporation's request for $20,000 in costs was not warranted.

Tartakovsky-Guilels v. York Region Condominium Corporation No. 829, 2024 ON CAT 152

York Region Condominium Corporation No. 829 (the **"Corporation"**) had a visitor parking policy, which required owners to register a visitor's vehicle parking overnight up to a maximum of 8 nights per calendar month. Failure to register a visitor's vehicle may result in the vehicle being ticketed or towed.

A unit owner, Yesenya Tartakovsky-Guilels, commenced an application before the Condominium Authority Tribunal (the **"Tribunal"**) challenging the enforceability of the Corporation's visitor parking policy and the Corporation's classification of a Toyota Corolla as a resident vehicle, preventing it from using the visitor parking.

The Owner argued that the restrictions in the visitor parking policy were not set out in the Corporation's governing documents, the terms "visitor" or "resident" were not defined in the governing documents, and that there was no rule or even a policy that specifies the criteria under which a vehicle may be deemed to belong to a resident or a visitor.

The Tribunal found that the restrictions found in the Corporation's visitor parking policy were not set out in the Corporation's governing documents, being the declaration, by-laws and rules. The Tribunal found that while condominium corporations may adopt rules governing the use of their visitor parking facilities, the *Condominium Act, 1998* (the **"Act"**) does not authorize condominium corporations to impose the types of restrictions set out in the Corporation's visitor parking policy through a policy or to sidestep the formal requirements of section 58 of the Act. Such rules must be formally enacted, with notice to owners, and must comply with the Act. Since the Corporation imposed parking restrictions through policies without enacting rules, the Tribunal held that the Corporation's visitor parking policy was invalid and unenforceable.

With respect to the owner's concerns regarding the Corporation's classification of the Toyota Corolla as a resident vehicle, the Corporation acknowledged that its enforcement actions had been unreasonable.

As a result, the Tribunal ordered the Corporation to cease enforcing its visitor parking policy unless and until it was formally enacted as a rule.

The Tribunal also ordered the Corporation to reimburse the owner for Tribunal fees in the amount of $200 and for the cost of a parking ticket related to the dispute.

Henry J. Jansen, P.Eng., ACCI, LCCI
Keller Engineering
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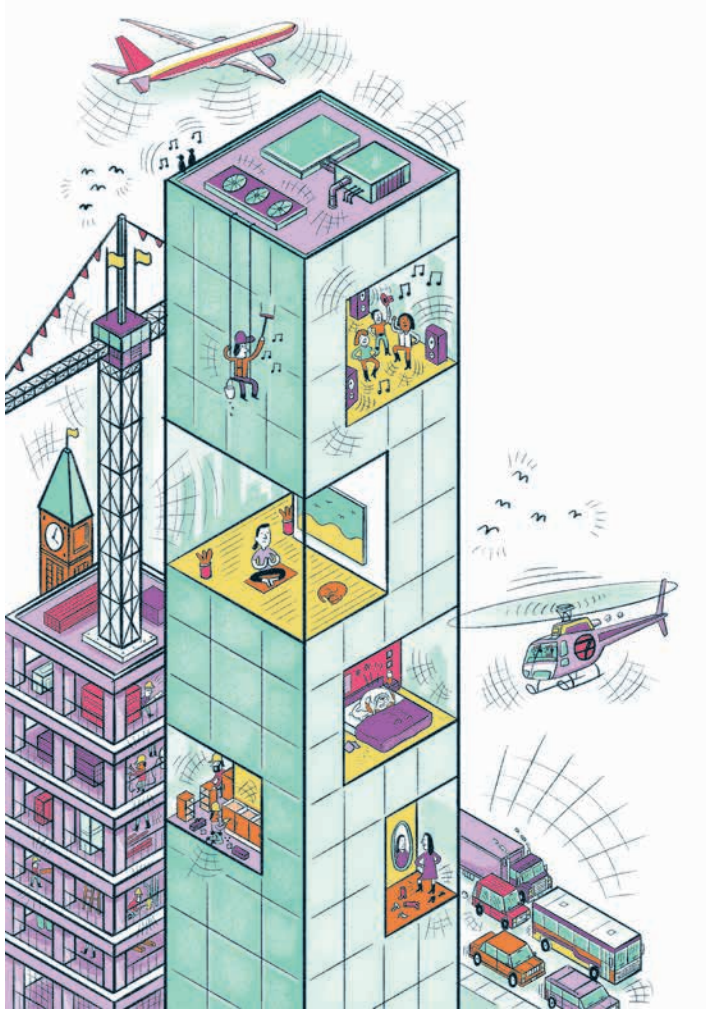
Cover Story

That Noise is Driving Me Crazy!

What are acceptable levels of sound transmission and can anything be done if those levels are exceeded?



Community living has many benefits. It also involves certain compromises. One of the more challenging aspects for owners to come to grips with is noise pollution. Residents, often moving from single-family homes, are not used to hearing their neighbors. Sound transmitted between units or from the outdoors can be extremely annoying and disruptive. And while many features of the unit can be appreciated during a walk-through, the amount of sound transmission is not always apparent. We will address how to define acceptable levels of sound transmission and what can be done if those levels are exceeded.

Where Does the Noise Come From?

If there is a perceived noise problem in your community, one of the first questions to ask is where is that noise coming from? Is the noise coming from the outside? Examples would be transportation-related noise such as highways, airplanes, or rail noise. It might also be transitory, like construction noise. And it might be seasonal, like outdoor activity, especially when windows are open.

Internal noises may be transferred between units or from common areas into each unit. Transmission between units may be via walls, ceilings, or floors. It may also occur as a result of mechanical chases or through the actual piping or ductwork itself.

When addressing noise issues, it is important to determine whether the problem is localized or omnipresent. Certain orientations may be more susceptible to noise issues than others. As well, certain parts of a building – those near fans or mechanical equipment, recreational areas, for example – may be more prone than others to experience problems. We have even found variations between units due to construction inconsistencies. For example, one area was built to specification and experienced no problems. Field modifications in another area of the same building created a problem.

What Types of Buildings Are Prone to Problems

Any building may experience sound transmission issues, but the biggest determining factors are the physical location, type, quality of construction and the age of the building. If a development is built near a highway or a flight path, the resulting potential problems may be obvious and hopefully were addressed during the design stages. Wood-frame buildings are more problematic, as are older buildings, especially ones that were conversions from factories or ware-

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There are, however, some relatively objective standards that have been developed by engineers and scientists to both quantify sound transmission and define acceptable levels

houses, which can present particularly difficult problems. Structural components may promote sound transfer allowing it to pass unobstructed from unit to unit. While some wall and ceiling assemblies are more effective than others, all must be assembled correctly with plenty of attention to detail. Care must be exercised to avoid "flanking paths" that allow sound to get around sound-deadening assemblies.

Defining the Problem

In a world where perception is reality, the first task is to define the problem. Is the noise that is causing complaints louder or more frequent than the occupants might reasonably expect? It is important to recognize that much of this is subjective. Different people will have different tolerances. The type of noise is also a concern – music, conversation, toilets flushing – each carries with it a relative level of acceptability.

There are, however, some relatively objective standards that have been developed by engineers and scientists to both quantify sound transmission and define acceptable levels.

The Sound Transmission Class (STC) is a value derived from creating and measuring the sound attenuation at various frequencies and comparing that to a standard reference. Whereas the STC measures sound transmission between areas separated by a common surface (walls, windows, etc.), the Apparent Sound Transmission Class (ASTC) is a more comprehensive measure in that it incorporates other pathways of sound transmission such as beams, columns, and chases for mechanical and electrical equipment and is generally the basis for field testing. The Impact Insulation Class (IIC), or Field Impact Insulation Class (FIIC), is a measure of impact-generated sound transmission through any surface, but typically floors. The Outdoor-Indoor Transmission Class (OITC) is similar to the STC except that it is used to measure the transmission from outdoor-generated noises (e.g., planes, trains, and automobiles).

The following table, which matches the building code, provides a general correlation of STC to audible levels of sound between spaces. In our experience, however, the code may underestimate the volume and levels of sound that residents find offensive.

STC	What Can Be Heard
25	Normal speech
30	Loud speech
35	Loud speech, but not intelligibly
40	Onset of "privacy"
42	Loud speech audible as a murmur
45	Loud speech not audible; 90% of statistical population "not annoyed"
50	Very loud sounds like instruments or stereos faintly heard; 99% of statistical population "not annoyed"
60+	Most sounds inaudible

Although measurements are made with highly sensitive equipment, the results can often be misleading, and almost never duplicate results obtained in a laboratory. The size and configuration of the room, as well as the existence of penetrations and other types of media, will greatly affect the sound attenuation.

The STC and the IIC have been incorporated into the Ontario Building Code (OBC). Typically, the code specifies values of 50. However, these are typically minimum levels and may not be high enough to produce comfortable noise control in multi-attached residential units. Designers and developers can always specify a higher STC than the code requires. The OBC is silent with regard to OITC.

What Can Be Done to Improve Sound Isolation Between Spaces?

Sound energy, like thermal energy, is best disrupted by creating breaks between spaces. Mass also plays a role in overall comfort. Generally, to improve Transmission Loss (i.e., the ratio of the sound energy striking the wall to the transmitted sound energy, as expressed in decibels), designers should seek to increase the weight of the surface layers and/or increase the distance between the surfaces. Fiberglass insulation is often used, even in interior walls, to reduce sound transmission. Caulks and sealants are often used as well. Building walls in which the studs are offset and penetrations like electrical boxes and medicine cabinets are sealed can go a long way to improve the conditions. Drywall can be attached with resilient channels.

Dampening the source should also be considered. Many condominiums are beginning to establish minimum IIC ratings for floor finishes and set limits for sound levels from audio equipment. Other more sophisticated strategies like baffling can be employed.

Conclusion

Reducing sound transmission in an existing building, whether old or new, is much more difficult than including good sound transmission practice as part of new construction. Reduction of sound transmission in wood-framed buildings is generally more difficult than masonry or steel structures. Proper representation of what to expect in the building is important at the time of sale.

If problems arise, the first steps are to determine the existence of a real problem, attempt to quantify it, inspect to ensure that components were actually built as planned, and then hire a qualified consultant to recommend improvements.

Henry J. Jansen, *P.Eng., ACCI, LCCI is Director, GTA & Southern Ontario for Keller Engineering. Henry is a past CCI-T board director and currently sits on the CCI-GR board. www.kellerengineering.com*

Sandy Fantino,
Vice-President, Client Executive
BFL CANADA

Condominium Insurance

What's the Difference?

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We all take comfort knowing that our possessions are protected. That's why homeowners purchase home and other types of insurance. In fact, it is a requirement of the Condominium Act that the corporation have insurance for all units. But like just about everything else, the devil is often in the details as the Act doesn't cover improvements to individual units.

This is especially true when it comes to insuring a condominium where there are different limitations between the condominium corporation itself and individual owners. Having a set of clearly defined details is critical to help guide repairs or damages in the event of a claim. Fortunately, legislation allows condominiums to enact Standard Unit Bylaws which sets out responsibility and liability in the event of a claim. Without this clear definition, if a loss were to occur repairs could result in lengthy and costly debate among the corporation, owners and insurers alike. If there is any sense of ambiguity when it comes to responsibility, this can create serious headaches and roadblocks in settling the claim and repairing any damage.

Condo owners must individually have coverage for the contents of their units as well as any additional improvements that they may have made to their home. This works in concert with the overall coverage of the condominium corporation itself. However, if you have made upgrades to the unit by adding new flooring, a new suite of kitchen appliances and fixtures, and other improvements you will have to ensure that you have appropriate coverage. It is important that you have your broker review your coverage to see if there are gaps between your policy and the master policy. For example, windows and fireplaces may not be covered under the master policy.

That's why it's important for condo owners to familiarize themselves with the rules, regulations and terminology around their coverage. A good starting point is the Standard Unit Bylaw — one of the by-laws of the condominium corporation that outlines the standard unit definition, lists the components insured by the corporation's insurer, and details the exclusions that become improvements or betterments insured by the respective insurer of the unit owner. The "standard" unit components, such as the walls, ceilings, electrical, and mechanical items, are listed in the relevant schedule. For the purposes of Sections 89 and 99 of the Condominium Act, 1998, any objects inside the unit that are not included in the Standard Unit Bylaw are referred to as "improvements." The corporation and unit owners will have differing interpretations of these by-laws. This by-law will clearly define the parameters for repairs.

ILLUSTRATION BY JAMIE BENNET

What are the choices?

There are really two choices to make when it comes to how a standard unit bylaw is defined. And this is where some debate occurs.

One option is to go with an uncomplicated, bare bones approach that covers basic inclusions such as ceilings, walls, sub-floors (not carpet or coverings such as laminate), and basic electrical systems excluding items like a furnace or heat pump. Everything else is defined as an improvement.

From an insurance perspective, it is ideal that your insurer has experience in insuring condominiums, as the representative can provide a heads-up on possible issues and pitfalls

The second option is to go with what is called a "developer's grade" which would include those improvements. This is where it is critical to specify the type of materials that are used as there are many ranges of quality. If the unit has baseboard, is it wood or some other material, how wide is it and does it have some other feature. Understandably, insurance premiums would be higher, but the owner would take comfort knowing that their home will be returned to its former level of comfort. This is important especially if the unit owner is considering selling soon.

What is the process or steps you need to take to pass a Standard Unit Bylaw?

Organization and structure are critical to passing a standard unit bylaw. There are many good sources for this information, but good communication with residents is a basic rule of thumb to being successful. Once a need has been identified, a draft of the bylaw needs to be prepared. It is advisable to have this prepared by legal counsel and then presented to the Board for discussion, debate and any modification. It is also advisable to seek input from other interested parties such as the property management company or resident manager, engineers and the property's insurer to flag any potential issues.

From an insurance perspective, it is ideal that your insurer has experience in insuring condominiums, as the representative can provide a heads-up on possible issues and pitfalls. They are often invited to speak during these deliberations and can provide advice and solutions to concerned owners.

Once the Board has settled on the final wording of the proposed bylaw, they must then get approval from the owners as part of a regular meeting. A copy of the proposal must be circulated with the notice of meeting. Owners may wish to make amendments, and after the wording is agreed to, it must be voted on and approved by a majority of 51 per cent.

In conclusion, adequate insurance coverage is about peace of mind and preparing for the unexpected. And a key element of that is ensuring that you know which policy covers what situations and understanding what to do in the event of a claim. CV

Sandy Fantino, *R.I.B. (Ont.) is a Vice President, Client Executive for the BFL CANADA Realty Division with over 12 years of insurance industry experience. Her focus is finding the best insurance solutions for condominium corporations and along with her team, she prides herself on professionalism and service to her clients.*

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Justin Tudor, P.Eng.
President
Keller Engineering

Poetry Corner

An Ode to the Reserve Fund Planner

Justin Tudor adds poet extrordinaire to his long list of accomplishments

Driving to a Board meeting on a dark and rainy night
Preparing to discuss how to get the funding plan right
Contemplating how many members in the room
Confident this meeting would have been better on Zoom

ILLUSTRATION BY KATHY BOAKE

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Mercifully, the Board has convened a special meeting
The focus: Reserve Funds, other matters shall be fleeting
Two hours scheduled, much to be discussed
This topic's important and must not be rushed

Discussing a bit of the Reserve Fund process
What's needed, what's spent, and where are the losses
Reviewing the need for more in depth inspection
"Reserve Funds are visual; and this roof needs dissection"

The draft had been provided, but scantily read
Presenting a summary of the path ahead
The building is aging and real work projected
The Condo Act requires the building be protected

An increase in fees, but no special assessment
A reasonable plan to protect their investment
But an air fills the room, the tension enhanced
"I have questions for you, not provided in advance"

"My aunt Mary, can roof this for this less"
Has your aunt Mary, considered the rest?
Has she included the full scope of the replacement
Or is it a loose quote with broad limitations

The non-scoped quote may not align
With the forecasted work, the planner has defined
The planner will draw from industry practices
To estimate the costs with reasonable exactness

"How rigid is this? Is this written in stone?"
The work plan's a guide, and not referenced alone
Boards should be prudent and monitor distress
If an element has failed, is only part of the test

Can the caulking be done when the windows are cleaned?
Does the unit need replacement, or just parts machined?
The Reserve Fund process can't include every variable
So Board's must be sure to leave options on the table

"Can we spread out the increase over ten years"
That wouldn't be fair to your future peers
The fund won't be adequate, it's just a charade
And the reserve fund will update three times a decade

"Let's partially fund – just to get us through
And deal with the future, when the update comes due"
This is not a plan, but a promise to be
In a worse position when this plan becomes three

Adequate is adequate and we should not pretend
That future owners will increase their spend
On projects that Boards knew about today
But didn't begin to put funds away.

"Why must I fund projects after I'm gone?"
The legacy of the condo lives on
If not for this rule, where would we be?
Special assessments only! (to infinity)

The Legislation, it seems, has created the creed
That Ontario Condos will have the funding they need
For 30-year foreseeable major costs required,
Today, those funds must start being acquired

"Should we look ahead to 50+ years?"
Yes – it's standard practice to assuage fears
Major work costs beyond the 30-year threshold
Should begin funding now, before they are too old

"If we spread out the project over 4 phases
Won't that limit the amount of actual raises?"
When practical, this can, be a good approach
But do not just fake it, when it matters most

If the work can't be done in multiple blocks
Don't fund it that way, or you're in for some shocks
Don't smooth out a cost just to lower your fee
You will buy some time, but at great costs, you'll see

"We've created our own plan" extols the Board
Not fully funded, but one we can afford"
It rarely conforms to the legislation
"I won't endorse it, I have reservations"

"I've provided my opinion and urge you to heed it
My counsel, as always, is there if you need it
I am a planner, I am not a minion;
And this, of course, is not legal opinion"

A good planner's job should some days be hard
Lest they cop-out and their futures be tarred
Principled approach and knowledge at minimum
Is required to maintain aging condominium

Wrapping up the meeting and resolving to issue
An updated draft that the Board can commit to
A successful meeting – neither bumps nor scrapes
The planner moves on; not all heroes wear capes

Justin Tudor, P. Eng., *is the President and Senior Project Manager at Keller Engineering, a multi-discipline building science and envelope firm which has been providing tailored engineering investigatory and project management services with a focus on condominium restoration since 1982.*

He has more than 15 years of experience in the field of building science and structural engineering. Justin has overseen and completed hundreds of reserve fund studies, building conditions assessments and technical audits, while leading building element investigation including odour transfers, cladding failures, water infiltration, concrete, masonry deterioration and membrane replacements.

As a contract administrator, Justin prepares drawings and specifications for the structural rehabilitations, window and roofing replacements, parking renewals, and envelope restorations.

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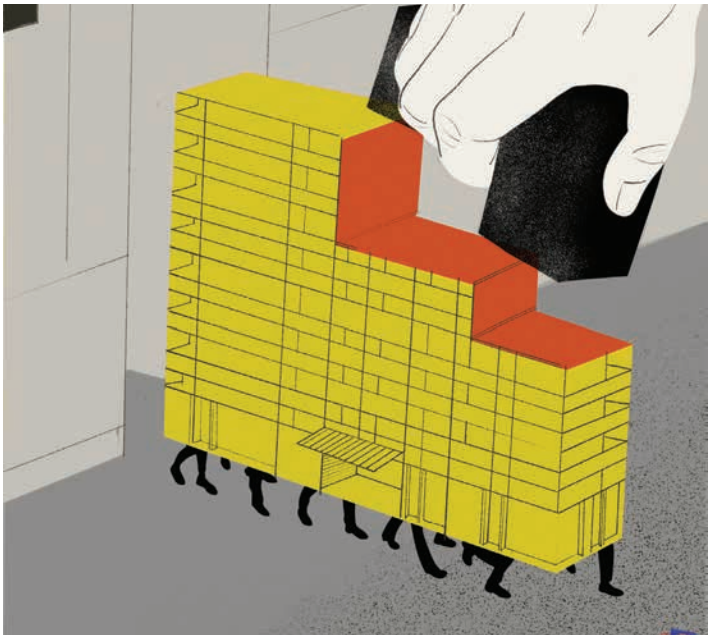
Chris Jaglowitz
Lawyer
Common Ground
Condo Law

Municipal Taxation Wisdom

Reduce Budget Drain of Corporation-Owned Units

Cost-saving strategies for condominium managers whose properties have corporation-owned units that currently may be subject to municipal tax



"The only certainties in life are death and taxes." It is possible, however, that some municipal taxes currently paid by condo corporations on units held in their name can be reclassified to reduce or eliminate the drain on their already tight budgets. Here are some cost-saving strategies for condominium managers whose properties have corporation-owned units that currently may be subject to municipal tax.

Corporation-owned units, which include superintendent suites, guest suites, gatehouses, recreation spaces, parking spaces and lockers, can be a drag on a condominium corporation's finances. Managers may be unaware whether their corporation-owned units – common amenities held by it on behalf of all unit owners – are subject to municipal taxation. Yes, if corporation-owned units are classified by the Municipal Property Assessment Corporation (MPAC) incorrectly as residential taxable units, condo managers should explore the possibility of having those units re-assessed and classified as common amenity units, which are non-taxable.

Investing a little time, persistence and some legal cost up front can often help condo managers eliminate the annual cost of municipal taxes and avoid unexpected hefty tax bills resulting from the wonky new federal and municipal taxes for vacant and underused housing. Let's look at how we got here historically.

Common amenity units and MPAC since the 2000s

The good fight for appropriate classification of common amenity units is not new. In fact, the successful appeals resulting in MPAC re-assessments date back to 2005. Importantly, in 2011 and 2013, a small team of GTA condo lawyers led by Bob Gardiner appealed successfully against MPAC and won precedent-setting cases that overturned MPAC's classifications of guest suites, super's suites and an on-site recreation centre and reduced the tax burden for more than 200 condo corporations at that time. What these decisions meant for condo corporations was no municipal tax on super's units, guest units, gatehouses and other corporation-owned units that had previously been assessed as taxable by MPAC.

Due to this success, many condo corporations have since taken action to eliminate taxes on their units but, surprisingly, many have not. Corporations created or having acquired units since then may be classified incorrectly, in which case they are paying municipal tax needlessly.

Municipal tax rates and MPAC

Now is an excellent time to check whether

ILLUSTRATION BY JASON SCHNEIDER

The Tax Terminator!

Kudos to Bob Gardiner of GMA Law who, in 2011 and 2013, led a small team of condo lawyers in advising condo boards to review the status of their corporation-owned units and file for reconsideration and re-assessment with MPAC. Bob spearheaded re-assessments as early as 2005 and was able to achieve significant tax savings and obtain MPAC re-assessments for many corporations' common amenity units. **Thanks for blazing the trail, Bob!!**

your common amenity units are assessed by MPAC correctly. Municipal tax rates are increasing (by almost 10% in the City of Toronto for 2024) and may sharply increase even further in 2025 when the new assessment cycle is expected to begin after taking a COVID-19 hiatus. That is to say: Municipal taxes for 2025 will be based on January 2022 market valuations, whereas they're currently based on January 2016 market values, which were far lower. For this reason, condo boards and managers are wise to proactively check for any corporation-owned units currently subject to tax and ask their legal team to help them get those units reclassified as non-taxable.

Other taxes

Beyond regular municipal property tax, there are other new taxes that deserve urgent attention. The federal Underused Housing Tax Act (the UHT Act) came into effect on January 1, 2022. This Act, administered by Canada Revenue Agency, imposes a federal 1% tax on residential properties that are vacant and underused. Non-resident residential owners are mostly impacted. Since condominium corporations are considered owners of residential properties such as a super's suite or guest suite, the UHT Act imposes additional reporting responsibilities for corporations, including the requirement to file a yearly UHT return form. Non-compliance comes with a hefty $10,000 fine for corporations.

That's not all. Toronto and other municipalities have also introduced (or are looking to introduce) their own forms of underused or vacant home taxes. These all require extra paperwork and proactive filings to avoid large tax bills. Get accounting and legal help to assist with these taxes, and some of the tips below may help.

Handy Tips

For municipal property taxes, there is hope. Condo managers can be the corporation's hero by identifying and acting on cost-saving opportunities and discovering ways to streamline administration of corporation-owned units.

Here is a checklist of tax management tips that can be cost effective for your condo corporation:

Financials

1) Begin with the basics. Budget preparation is an opportune time to check for municipal tax line items on budgets and financial statements. Make it a point to investigate these items. Ask your lawyers or auditors for help. You'll thank yourself.

2) Avoid the urge to procrastinate - gather and file municipal tax bills and notices of assessment to identify potential tax savings.

3) If taxes are truly payable, pay them on time. There's no reason to be hit with fines for late payments.

4) Closely watch for municipal tax mailings about vacant properties or underused housing and respond by making required filings or declarations within deadlines.

Corporation's Records

5) Make sure you know the legal description (i.e., Unit # and Level #) for any corporation-owned units. Reference the condo declaration and its description drawings to identify such units and ensure your unit list is accurate.

Municipalities and MPAC

6) Ensure the corporation's address for service is updated with your municipality and MPAC and give your site management office address (if applicable) rather than head office. This way you receive the applicable notices, despite periodic management firm changes.

7) Record the Assessment roll numbers, these are 19-digit numbers that identify your property, for the various parcels/units owned by the corporation. A common amenity unit such as a super's unit or a guest suite will not have a tax roll number if it is part of the common elements, but probably will have a roll number if the amenity is a legal unit.

8) Use MPAC's website for reference and to gather information. Connect with MPAC regularly. Email them with information changes to your corporation or questions that your board or you as condominium manager may have.

9) Ensure that amenities are transferred to the corporation as noted above. Developers sometimes neglect to do so in the early years, or at all.

10) Finally, remember that s.15(2) of the Condo Act confirms that common elements are not subject to municipal taxes!

Municipal taxes on corporation-owned units can be complex. When in doubt, ask your lawyers and accountants for guidance and advice. CV

Chris Jaglowitz *has practiced condo law for 20 years. He owns Common Ground Condo Law.*

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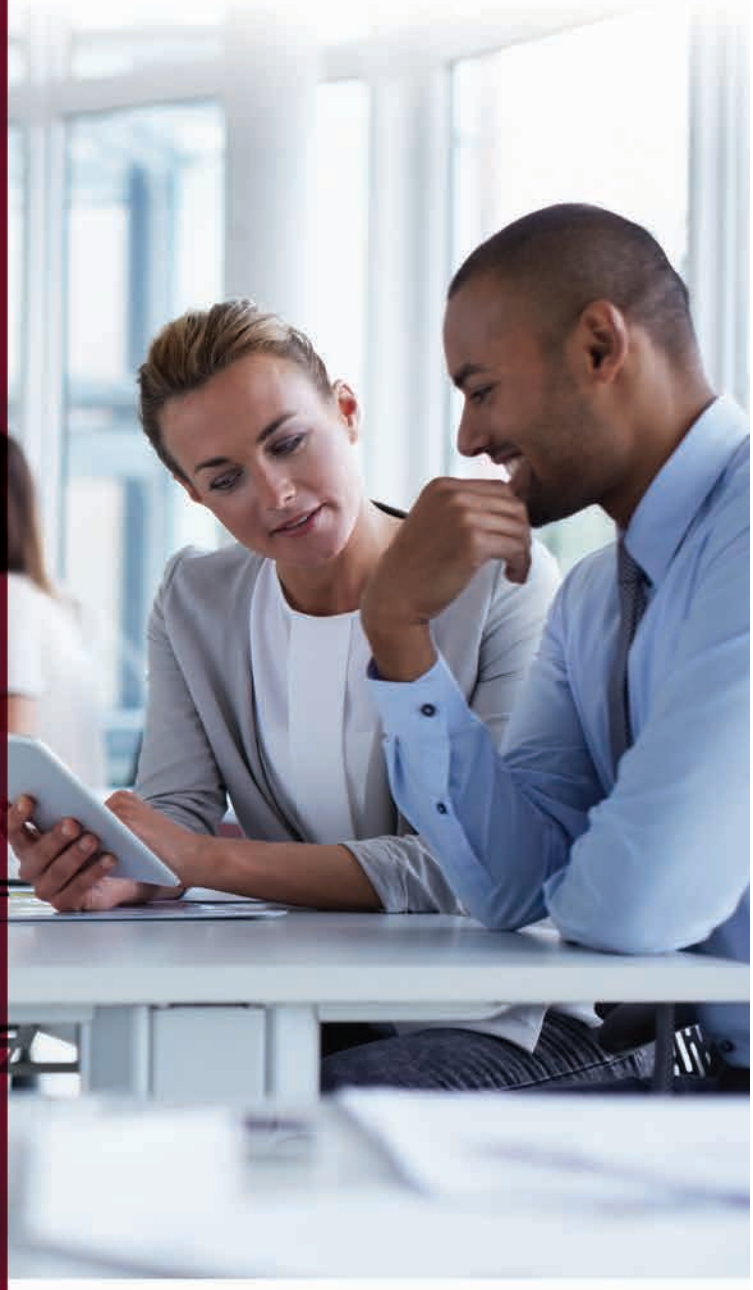

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Alan Rosenberg
A. R. Consulting

Managing Managers

Condominium Property Management

"Oh, no – not again!" Yes, again. And don't try to escape, I have the doors locked and the airports covered

Now that we've gotten that unpleasantness out of the way, I'd like to discuss with you, or remind you of – as the case may be – certain realities about the condo management world that will inexorably affect your Board of Directors and the corporation to which the Board so selflessly administers. In my several decades of serving the condo community, and also serving on two different condo Boards during that time for a total of twenty years, I've encountered many topics of considerable interest and importance to that community. Here are just a few – and there are many, if the editorial Board of Condovoice can tolerate more of them in future issues.
**I started my condo career when I was thirteen. Honest.*

1.

Oh, Alan, stop snowing us, it's all about the property manager. Don't give us all that candy floss about "It's important to know the company, not just the property manager."

I get it. The on-site property manager, whether full-time, part-time, or occasional participant at the site, is the person most dealt with by the Board. And almost always the only representative of the company which employs that person, whom the residents see. So therefore, it would seem to follow that if there's a good property manager at the site, it means "now there's a good company." And if the manager's not so good, it means "Hey, Board: why don't you get rid of that management company?" So let's go with that for a moment. Let's say your corporation has the best possible on-site property manager. He or she (let's settle on "the PM") has most if not all the answers to the Board's questions, possesses immaculate people skills in dealing with the residents, is proactive in seeing what needs fixing, brings in quality contractors promptly to do the fixing, has a wealth of knowledge and experience, and can read, interpret and explain the monthly financial statement produced by the management company. Amazing. You're set, right? But what happens if:

- The PM is so good the company promotes them to regional/district/area manager? (Not a tragedy if that region includes your property – at least there's some continuity.)
- The PM is so good the company promotes them to regional/district/area manager – but in an area that doesn't include your property? Still not terrible, but not so great.
- The PM has to leave, because the PM's partner has been transferred to an-

ILLUSTRATION BY MAURICE VELLEKOOP

other city?
- The PM, heaven forbid, takes seriously ill, on a long-term basis?
- The PM – and this may be the juiciest one –gets "poached" by another company? (You all surely know that condo management companies are in interview mode 24/7 these days, right? See below.)

What then? Well, perhaps this doesn't apply to you, because your corporation has a manager who's "there for life," until they retire. But in the other 98% of Ontario's condo corporations, the management company simply parachutes another fully-trained, fully qualified General License PM, and you're good to go, right? Except: as stated in a wonderfully well-written article several months ago in this very publication, there are between 11,000 and 12,000 condo corporations in Ontario, and fewer than 2,000 fully-trained, fully qualified General License PMs. That makes an instant replacement, with a PM of anywhere near the same calibre, a bit tricky. Therefore, the Board has to hope that the management company:

- Has that replacement PM ready to go, or
- Can safely promote a PM-to-be into that role, or
- Can poach a suitable PM from another company, or
- Can think outside the box, and look at "creating" a PM from other sources (admin assistant, concierge, superintendent, even a hotel manager), or
- Shows that it values its PM's by supporting them, educating them, mentoring them, and paying them competitively – thereby reducing the risk of their being poached. (Note – in no way does the author encourage poaching! But it happens, whether or not the author approves.)

So how do you determine if the company ticks these boxes? If it's the incumbent, it might be wise to chat with the decision-makers (the PM's employers), and receive reassurance that at least some of these boxes have been ticked. If you're interviewing companies to see what the marketplace has to offer, it's important to make this a vital part of your search/appraisal process. Not to burden you, but

There are between 11,000 and 12,000 condo corporations in Ontario, and fewer than 2,000 fully-trained, fully qualified General License PMs. That makes an instant replacement, with a PM of anywhere near the same calibre, a bit tricky

it's up to the Board to be aware of this. You do yourselves a disservice by not drilling deep into this aspect of condo property management. In conclusion, I suggest the mantra be updated to: "It's all about the property manager – until it isn't."

2.

Alan: These quotes we receive from the contractors (or trades, or suppliers) are all over the place. Why can't we get companies all quoting on the same thing?

This can happen when there is no standard set of criteria on which the service or product suppliers can bid. Surprisingly, I still encounter situations where incumbent management does not have sets of standard specs for such important areas as grounds-keeping (landscaping, snow clearing), concierge/security, hallway/common area cleaning, pool maintenance, pest control, etc. (Note: this does not include major projects which are so extensive as to require engineers to provide the specs). But in the other situations not requiring the services of an engineering firm, it's incumbent upon the management company to:

- Create and maintain these specs
- Ensure that the specs allow for reasonable variations – which must be explained clearly
- Ensure that the PMs are using them consistently
- Send the specs to reputable, experienced contractors/trades/suppliers
- Ensure that the quotes adhere to the specs
- Summarize the comparative quotations in readily-accessible form, for the Board's benefit
- Recommend the choice, based upon not only the quotations but also the management company's own knowledge and experience.

A capable, experienced, management company, whether large, mid-sized, small, or even boutique-sized, should be capable of creating effective specs for all of the disciplines mentioned above. And you have my assurance that the quotes in response to these specs will be more relevant, rather than "out of left field."

3.

Alan: How do we really know if our management company is doing the right things for us? Are we being reasonable? Are we micro-managing? How do we know what to expect from them?

To reiterate one of my mantras:

- The management company gives the Board advice
- The Board makes decisions based on that advice, and other appropriate criteria
- The management company carries out the decisions made by the Board
- The Board, as the executive body responsible to the condominium corporation, monitors the management company's execution of the Board's decision.

Here's the second part. As to how to assess the company, whether the incumbent or any company the Board may consider hiring, here are my criteria (in no particular order of importance – depends on the situation):

Assessment Criteria (Seven Elements of Condominium Management)

- On-Site Operations
- Accountability, Credibility
- In-House Resources, Condominium Expertise
- Communication
- Financial/Administration Services
- Cost-Savings/Economies of Scale
- Safety, Conservation

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On-Site Operations

- Anticipation of, rather than reaction to, daily occurrences and problems; a thoroughly pro-active approach, on the part of management, to their responsibilities
- Management's in-house "spec's" for contract tendering: How rigorous? How thorough? Does the Board receive sufficient "legitimate quotes" in every case? Does management analyze the quotations appropriately, so the Board can make the best possible decisions?
- Effective supervision of all trades and contractors
- Focused guidance on major projects (renovations, etc) – seeing as your corporation, given its age, may possibly have a number of such major projects on the horizon
- Constructive enforcement of the corporation's by-laws and rules
- Inspections with a purpose – that is, pro-active management
- Preventive Maintenance Program: must implement and apply, to the Board's satisfaction
- Continuity and consistency in management's on-site staff

Accountability, Credibility

- Attitude toward client: can you count on management to support, at all times (within reason and legal parameters), the members of the Board?
- Is there at all times someone in authority for the Board to contact, in the event of any lingering dissatisfaction? Does this result in resolution of the problems? Are management's senior staff reachable, reasonable and responsive, when access to them is required?

In-House Resources, Condominium Expertise

- Management's available expertise, back-up, and consultative personnel, in such areas as major projects/renovations, technology advances, and legislation updates
- Experience in similar situations (property's size, age, location)
- Familiarity with insurance issues, to complement (or offset, if need be) the broker's input
- Reputation in the condominium community, stability of key personnel

> A capable, experienced, management company, whether large, mid-sized, small, or even boutique-sized, should be capable of creating effective specs for all of the disciplines mentioned

- Thorough knowledge of: Condominium Act (including the new Regulations), Declaration, By-Laws, Rules;willingness and ability to enforce the rules (also an "On-Site Operations" issue)

Communication

- How frequently, and how effectively, does the management company communicate with the Board members, (beyond the efforts of the on-site manager)? Response to questions and issues raised by the members: Prompt? Courteous? Credible?
- Ditto, the management company to the residents? How does the on-site property management site staff behave in direct contact with the residents?
- Do the on-site management personnel get the proper assistance from "head office"? It is essential – no matter how capable the on-site personnel – that there is appropriate support.

Financial/Administrative Services

- Financial Statements: accuracy, timeliness, readability, variance reports
- Budget procedures: Latest data from utilities suppliers? Comparative statistics?
- Controls: Spending limits (apart from contract limits); signing authority; Investments
- Status Certificates: accuracy, timeliness
- Prudent, organized maintenance of the condo corporation's records (contracts, minutes, etc)
- Awareness of Reserve Fund Study: evaluation of replaceable technical equipment; ability to evaluate the Study itself

Cost-Savings

Includes (a) contracted (regulatory and scheduled) maintenance and repairs, (b) unscheduled repair and maintenance items, and (c) administrative expenses, and addresses the following:

- Maximization of the earnings potential on the corporation community's funds.
- Effective (i.e. "bulk") purchasing procedures, re: supplies, contracts, etc.
- Access to Bulk Utilities purchases, if applicable
- Energy monitoring and management where applicable
- Knowledge and experience database for info-sharing (result: cost-savings)
- An ongoing intention to pro-actively analyze the budget, line-by-line if necessary

Safety, Conservation

- Management's 24-hour emergency service: accessibility, communication level, reliability,
- Fire safety/emergency system: suitability of entire program and procedures
- The "WHMIS" Program: the proper storage of all combustible materials, etc.

I hope this will be of assistance to the reader. (Okay, the doors are now unlocked, and you may make your escape.)

Alan Rosenberg *was a member of the condominium management industry for twenty years, following which he established A. R. Consulting, an advisory service to condominium Board members on property management issues. He continues in that role to this day. During this forty-five-plus-year career, he was also a condo Board member for an accumulated twenty years.*

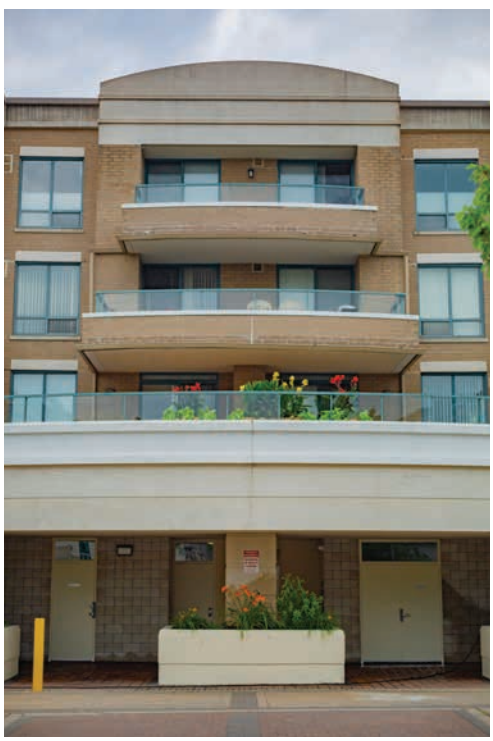
** (PS – He was considerably older than thirteen when he began his condo career. Honest.)*

James Russell
Newsletters et Cetera

CCI – MTCC 1272

THE THOROUGHBRED OF CONDOMINIUM COMMUNITIES

In days of ole the very air of Queen Street East trembled from the thunder of hooves as a half dozen magnificent equines, their muscles taut, hair glistening with sweat, hurtled like crazed demons toward the finish line to the cheers of elegantly dressed women in exquisite bonnets and men in stately, single button coats and regal top hats.



PHOTOGRAPHY BY JEFF KIRK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THE RESIDENTS

OF MTCC 1272 ENJOY A WIDE VARIETY OF SOCIAL EVENTS INCLUDING MUSIC EVENINGS, THEIR ANNUAL BBQ, MOVIE NIGHTS AND THE WEEKLY 'KLATSCH', A WORD DERIVED FROM 'KAFFEEKLAT', ONCE A GERMAN WORD FOR 'GOSSIP' BUT CURRENTLY USED TO DESCRIBE A CASUAL GATHERING OF PEOPLE FOR INFORMAL CONVERSATION AND, OF COURSE, A HOT CUP OF BREW

In 1993, Woodbine race track, having been renamed Greenwood Raceway in 1963, was then relocated in 1994 to 780 acre plot north of Pearson Airport and re-Christened Woodbine Racetrack. When the track and stadium were demolished, it opened up a huge swath of land, which MTCC 1272, built in 1999, claimed a portion on the northern border. Today, residents with suites on the south side of MTCC 1272 still face what was Woodbine Race Track's finish line, now a vast panorama of townhouses.

BUILDING

MTCC 1272, or 'The Beach Condominiums' as her residents refer to their three storey community, turns twenty-fife years young this year, having opened in 1999. "Residents are a mix of all ages, from retirees to young folk, whether singles or couples starting out their lives together," says Ginette Purser, the Board's President who adds "everybody is a 'resident', we don't care if they buy or rent - everyone is welcome." That spirit of welcome and community was more than evident during the pandemic, when young people in the building reached out to the more senior and physically challenged resident's in the building, offering to shop, deliver meals or run errands, recounts Ginette.

MTCC 1272 houses forty-eight, boutique, one, two and three bedroom suites. The building was Phase 2 of a development comprising five, Queen Street facing condominium buildings, each a separate corporation. In total the five buildings contain 317 units and span several blocks, incorporating appropriately named streets such as Northern Dancer (a famous thoroughbred), Winners Circle, Joseph Duggan Rd. (one of the property's more recent owners), and Sarah Ashbridge whose family fled to Canada to escape persecution in America, were granted a series of plots comprising six-hundred acres stretching from Lake Ontario to Danforth Ave and including the land where MTCC 1272 sits.

Suites on the north side of MTCC 1272, with its three faux-Tuscan style columns and beach-sand coloured north façade are graced with balconies that face lively Queen Street, while suites on the south side have expansive terraces that some residents like Ginette, have turned into lush, urban gardens. The building's amenities include a well-equipped gym and a large multi-purpose room, both open to residents 24/7. The multi-purpose room is often used by the building's students as a study area. Stunningly beautiful photos of the Beach community, taken by Beach resident Erwin Buck, adorn walls throughout the common areas including their recently renovated lobby, which serves not only as an impressive entrance to the building but "the lobby is a meeting place," says the Board's Treasurer Hayley Annhernu. One of the lob-

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by's denizens is Tony who regularly holds court in the lobby with an ample supply of dog treats for his canine friends, all of whom he greets by name.

RESIDENTS

The residents of MTCC 1272 enjoy a wide variety of social events including Music Evenings, their annual BBQ, movie nights and the weekly 'Klatsch', a word derived from 'Kaffeeklat', once a German word for 'gossip' but currently used to describe a casual gathering of people for informal
conversation and, of course, a hot cup of brew. The popular Klatsch takes place every Monday afternoon. Admission is seventy-five cents.

The resident's own publication, The Community News Bulletin, published by the Community Events Planning Group, includes greetings from new owners in the building, news about local businesses gardening tips, and tips for residents - such as how not to accidentally lock oneself out of one's suite. The Bulletin is distributed to all five Beach Condominiums' buildings.

BOARD

MTCC 1272's Board is made up of Ginette Purser, President; Hayley Annhernu, Treasurer and member of the building's Gardening Task Force, and George Marian, who in addition to serving as the Board's Vice President, is a professional singer, or "a Gentleman Crooner," as he describes himself.

Ginette, elected as President in 2021, has been in the building 11 years, having purchased in 2013 with her husband Paul who grew up in the Beach, while Ginette had been living nearby before moving into MTCC 1272. George Marian has been in the building seven years, while Hayley, a relative newcomer, moved into the building three years ago, in part because she had friends in the building.

The Beach holds a special significance for George, "I met my wife in the Beach." George, who moved to the Beach from Winnipeg, and his wife have lived in the building seven years and he was elected to the Board in 2018.

Ginette, George and Hayley prefer one-on-one communication with residents, in addition to feedback they receive in the lobby's suggestion box and at their AGM, a hybrid mix of online and in person attendance.

MANAGEMENT

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says Michael Rotondo, MTCC 1272's off-site Property Manager, who then adds, "It's my favourite building."

Junior Property Manager Mike Marchese, filling at times for Michael, shares Michael's high regard for MTCC 1272, "this building is amazing, it basically runs itself." Not surprisingly, The Board and residents are just as enthusiastic about their property manager, "Michael is fabulous," says Ginette, "he's on top of things."

A major contributor to MTCC 1272's ability to create and sustain a championship community is Maria Claudia who visits MTCC1272 once a week. "I believe Maria's title is cleaner but I call her our Cleaner Extraordinaire), "She takes such pride in her work," adds Ginette. Maria, not only keeps the building spotless but does double duty watering the building's garden and greenery.

PROJECTS

When it comes to infrastructure improvements, "We have gone beyond requirements," says Hayley who uses the example of automatic door openers, which the Board installed long before Section 3.8.3.3. of the Ontario Building Code mandated the openers. Recent improvements to the building's facilities also include a refurbished multi-purpose room, elevator upgrades and replacing their lobby furniture to meet the requirements of CAN/ULC-S109.

The addition ambiance of a wicker conversation set and cedar planters to the the multi-purpose room's spacious balcony added additional As with any building, contractors come and go, often on a one off basis so it warmed Ginette's heart when one of their repeat contractors once told Ginette that her's was "the friendliest building" of all his clients.

Hayley revealed that although the Board is not aware of any residents currently parking EV vehicles in the garage, a survey taken after their last AGM found that about 50% of the owners were in favour of the Board installing an EV charging station. Subsequently, "we have interviewed (EV charging) companies," says Hayley.

GREENING

The Board and residents are especially proud of their perennial garden, located in MTCC1272's south-side, concrete planters. In addition, there are three cedar planters on multi-purpose room's terrace. The planters, overseen by the Gardening Task Force and maintained by residents, contain a wealth of native plants, chosen to attract pollinators while the ground level planters contain a healthy collection of tomato, pepper, lettuce, oregano, rosemary, sage, and colandro, as well as day lilies, coneflowers, and geraniums.

Residents are encouraged to share ideas, participate is small projects (e.g. planting flowers, assembly of accessories, etc) . residents deposit their organics, garbage, and recyclables in, what George refers to as "different buckets (bins)" in the ground floor recycling room.

About six years ago, the Board replaced their lighting in the common elements and underground garage with LEDs. The Board is also looking at installing solar panels, says Hayley, "and possibly a green roof," adds Ginette

CONCLUSION

A 25th Anniversary Planning Committee is being established to organize a celebration. The Committee also plans to reach out to former owners. And although the echoing clop, clop, clop of horse's hooves can still be heard on occasion , it is only the passing patrol of the Metro Police mounted unit. CV

Sally Thompson
P.Eng. LCCI
Managing Principal
Synergy Partners

Michael New
P.Eng.
Senior Project Manager
Synergy Partners

Structural Issues

Post-Tensioning

What is it and how might it impact your building?

Occasionally, we encounter a condominium corporation who are not aware that their building structural system is post-tensioned concrete. This is a problem, because post-tensioned buildings need some extra care to manage risk. This article explores post-tensioning and what condominium boards and managers need to know.

What is Post-Tensioning?

Most concrete-framed high-rise buildings in Ontario are constructed using concrete reinforced by steel rebar *(see Figure 1, following page)*. In a small percentage of buildings, high-strength steel post-tensioning cables are used as the primary reinforcement, supplemented by rebar. Post-tensioned cables consist of 7 individual wires, twisted together to form a single cable. The cables are placed in the formwork before pouring concrete. After the concrete cures, these cables are stretched to induce tension using a high-pressure jack. The stress in the cables is transferred to anchors, primarily at the cables' ends, which lock the cables in place. This creates compression in the slab and enhances its structural properties. Post-tensioning allows for thinner slabs, longer spans, and a lighter overall structure. However, the tension needs to be maintained throughout the building lifespan to preserve the structural integrity of the building.

Historically, the cables were coated in grease and wrapped in paper, but modern buildings use a plastic sheathing over the cables with grease inside *(See Figure 1, following page)*.

What are the Long-term Risks?

If the cables rust, they can break and release their tension. Cable rusting can be caused by water which accesses the cables either from the time of construction, causing failure many years, even decades after construction, or by water which accesses the cables during the life of the building, perhaps due to leakage.

Conventionally-reinforced structures typically only suffer rebar corrosion if salt and water are present. Otherwise, the rebar is protected by a "passive-layer" which forms on the steel when it is placed in concrete. Unbonded post-tensioned structures only require water to rust, because the cables sit inside a sheath, rather than being cast into the concrete directly. They have no passive layer and are therefore subject to atmospheric corrosion. Of course, while salt is not necessary for the corrosion of post-tensioning cables, if it is present, the corrosion will be much worse.

When a conventionally-reinforced structure deteriorates, the deterioration is slow, with a gradual transfer of load from a deteriorating section of the structure to surrounding areas. The concrete around the rusting rebar is typically pushed away from the rebar by the ever-increasing volume of the rust, resulting in characteristic delamination of the concrete, and lots of warning of an impending problem. When a post-tensioning cable fails, there is no visible warning because the concrete around the rusting cable is not impacted by the corrosion. Failure results in a very rapid

ILLUSTRATION BY RENE ZAMICK

Figure 1: Conventional Rebar (above) and Post-Tensioning Cables (below)

Figure 2: Cables replacement underway in a parking garage

transfer of load onto adjacent cables. If these adjacent cables are also corroded, then the sudden imposition of load can also cause them to subsequently fail. In this way, post-tensioned structures are prone to more sudden failure.

Is my Building Post-Tensioned?

It is very difficult to visually identify a post-tensioned building. Most are identified via review of the structural drawings. Without structural drawings, there are a few tell-tale signs that may indicate a higher probability that a structure is post-tensioned. These include:

- **Slab Thickness:** Slabs in conventionally reinforced structures are generally 200mm thick. In post-tensioned structures, slabs can be thinner than this, down to about 150mm thick.

- **Column to column spans:** Most conventionally reinforced buildings have column-to-column spans of about 6m. Post-tensioned buildings often have spans of 6.5m or more.

- **Slab Edge Joints:** Some post-tensioned buildings have visible joints around the perimeter of garage slabs, between the slab and the wall, with the slab resting on a ledge built into the foundation wall. Conventionally reinforced slabs will generally be continuous with the foundation wall. Absence of these joints is not conclusive though, because some post-tensioned slabs run directly through the walls (if the tendons were stressed from the outside face of the foundation wall). The presence of joints is also not conclusive, because some buildings isolate the slabs from the walls to avoid vibration transmission (like next to a subway).

- **Builder:** In Toronto, many, but not all, Tridel-built condominiums constructed in the 1980s were post-tensioned.

- **Grout plugs:** Small circular openings, about 75mm in diameter that were used to access the cables for stressing may be visible at some slab edges. After the cables are stressed, they are filled with grout. These grout plugs can sometimes be seen at slab edges at balconies, in stairwells, or behind wall cladding (such as behind brick).

If you are not sure if your building is post-tensioned, then it is well worthwhile to make the effort to obtain a set of the original structural drawings and have the building engineer review them. Structural drawings are often registered at the registry office or may be retained by the municipality.

What Testing is Required?

If you have a post-tensioned building, you need to have a specialist complete periodic inspection of the cable system. These inspections consist of making openings into the slab to expose sample cables and evaluate their condition. There will be a visual evaluation for rust and water within the sheath. The engineer will also complete a penetration test, which is done by hammering a heavy flat-head screwdriver into the cable, between wires. For a properly stressed cable, it would be nearly impossible to get the screwdriver to penetrate. For a de-stressed wire or cable, penetration is easier. An experienced tester can also identify cases of inadequate stress levels.

To access the cables, concrete is chipped out, usually from the underside of the slab. After testing, the opening should be covered by a steel plate with insulation in the cavity, rather than replacing the concrete, so that the same cables can be accessed again in the future at lower cost. The steel plate needs to be robust to protect from eruption should the tested cable fail in the future, and the insulation and steel are key to maintaining the fire protection for the cables. At each cycle of testing, the engineer will revisit the openings made during prior investigations and will expand the sample to include additional locations. Over time, this allows the sample size to become more robust, which is good, because the risk of deterioration also increases with age.

Steel plates pose no problem in parking garages but are not ideal on the ceilings of suites. Regardless, it is advised to keep the cables accessible for future review.

What Costs Should We Plan for?

Periodic testing of the post-tensioning cables in your building should be planned in your reserve fund study. Typically, cables

located in a parking garage will be tested every five years starting after about ten years. Cables in the tower floors, if any, will probably be tested every 10 years, starting after about 20 years. If problems are observed during testing, then the testing frequency may be increased to allow closer supervision of the structure.

If serious problems arise, then repairs may become necessary and will need to be planned in your reserve fund study. Most commonly, problems are worse in parking garage slabs due to water and salt exposure. Only on rare occasions will we find failed cables in the occupied floors of a building.

Replacement costs of failed cables can vary greatly depending on access and the impact on the surrounding cable system. However, one cable can seldom be replaced in isolation because the cables tend to run in bundles of 2 or more cables. It is dangerous to work adjacent to stressed cables. Therefore, to replace one failed cable, the contractor often needs to de-stress the remaining cables in the bundle or even closely intersecting cables. De-stressing of these cables cannot be completed without shoring the entire section of the slab. *Figure 2 shows an example of cables being replaced.*

What Else do I Need to Know about Post-Tensioning?

It's crucial to avoid drilling or coring a post-tensioned slab without precise knowledge of the cable locations. Accidentally cutting or nicking a cable necessitates a structural analysis to assess if the structure remains sufficiently strong or if repair is necessary. As discussed, replacing a broken cable usually requires de-stressing and replacing several nearby cables leading to significant shoring and a very costly repair.

The condominium board in a post-tensioned building should periodically remind owners of this risk and mandate an x-ray or ground-penetrating radar (GPR) scan before any significant drilling/coring activities. The scan should be overseen by an experienced engineer. This scanning can be quite expensive and disruptive, particularly x-rays, which require evacuation of multiple floors. Some nominal drilling may be permitted, but the corporation will need to have a structural engineer define the maximum depth that can be drilled without risking damaging the cables.

Key Takeaways:

- Post-tensioned structures need to be monitored and maintained very differently than typical conventional-reinforced structures.
- These structures are more susceptible to localized damage related to leakage, drilling, coring, etc.
- Procedures should be in place to ensure that coring or drilling into the post-tensioned structural elements is done safely to prevent costly damage.
- Failures can be sudden, so routine monitoring is necessary.
- Periodic monitoring will let you allocate appropriate budgets in your reserve fund study.
- It is important to have a professional engineer with post-tensioning repair qualifications from the Post-Tensioning Institute oversee the monitoring and repair of these special buildings. CV

Julia Lurye
Partner
Horlick Condominium Law

Common Elements

Changes to the Common Elements

One area that continues to be a cause for confusion is changes made to the common elements

Whether the changes are to be made by the condominium corporation or by unit owners, the rights and obligations that attach to each party vary considerably. What follows is a basic guideline for both condominium corporations and unit owners contemplating changes to the common elements.

Changes to the Common Elements by the Corporation

A condominium corporation can make changes to the common elements provided that, in certain circumstances, it gives prior notice to unit owners or obtains approval of owners. Section 97 of the *Condominium Act, 1998* (the **"Act"**) identifies circumstances where a condominium corporation must give notice to owners or obtain approval of owners prior to making any changes to the common elements.

At the outset, it is important to note that maintenance and repairs by a condominium corporation are not deemed to be additions, alterations or improvements to the common elements, pursuant to section 97(1) of the Act.

There are 3 circumstances where a condominium corporation does not need to give notice to owners or obtain approval of owners prior to making changes to the common elements, as set out in section 97(2) of the Act:

1. the change to the common elements is required by law or to comply with a mutual use agreement (such as a cost sharing agreement);

2. the change to the common elements is necessary to ensure the safety or security of persons using the property, or if it is required to prevent imminent damage to the property or assets; or,

3. the estimated monthly cost of making the change to the common elements is no more than the greater of $1,000 or 1% of the annual budgeted common expenses for the current fiscal year. (Side note: once the new amendments to the Act come into force, the $1,000 or 1% threshold will increase to $30,000 or 3% of the annual budgeted common expenses and will be based on the estimated total cost of the change.)

It is important to note that a condominium corporation does not need to give notice to owners or obtain the approval of owners to use reserve funds to carry out major repairs and replacements of the common elements, pursuant to section 95(2) of the Act.

The circumstances requiring notice to owners and/or approval of owners largely relate to the estimated cost of the proposed change to the common elements.

Pursuant to section 97(3) of the Act, if the monthly cost of the change to the common elements is more than $1,000, but less than 10% of the annual budgeted common expenses, then the condominium corporation is required to give notice to owners together with the opportunity to

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requisition a meeting. The condominium corporation may only proceed with making the changes to the common elements where the owners failed to requisition a meeting within 30 days of receiving the notice, or, if a meeting of owners is requisitioned, then the owners have not voted against the proposed changes to the common elements at the meeting.

If the estimated total cost of the change to the common elements is more than 10% of the annual budgeted common expenses for the current fiscal year, then the change is considered to be a "substantial change" and prior approval of owners is required. In particular, a substantial change requires that notice be given to owners and that owners vote on the proposed change at a meeting of owners. To this end, the condominium corporation can only implement the change to the common elements if owners of at least 66 2/3% of the units in the corporation vote in favour of the proposed change.

The board of directors can also elect to treat any change to the common elements as a substantial change, and provide notice to owners and hold a vote of owners. Under the new amendments to the Act, which have yet to come into force, the condominium corporation will be required to provide notice to owners and obtain owner approval in circumstances where owners would regard the change to the common elements as causing a material reduction or elimination of their use or enjoyment of the units that they own, the common elements or assets of the corporation, even where there is a reduction in common expenses payable by unit owners.

The decision of *Little v. Metropolitan Toronto Condominium Corp. No. 590* provides a helpful overview of section 97 of the Act. In this case, the corporation used reserve funds to carry out certain work on the property, including upgrading the security system, upgrading the entrance canopy and providing a handicap access, and renovating the lobby. An owner disagreed with the corporation's use of the reserve funds and commenced a court application.

The Court held that the security system upgrade did not require prior notice to owners because it was related to safety and security. The Court found that the entrance canopy upgrade was simply a substitution of what had once been a modern canopy and that having a handicap access was a change required by law; and therefore, no notice was required. With respect to the lobby renovation, the Court found that although the manner in which the votes were collected by the corporation was improper (in that, not enough votes were collected at the meeting of owners, so the corporation decided to continue to collect votes for another 120 days after the meeting was terminated), the proposed changes to the lobby were fully disclosed to the owners prior to the renovations and the required number of owners approved the lobby renovations – albeit not a meeting of owners. Accordingly, the court dismissed the application with costs against the owner.

The takeaway is that the type of change and the estimated cost of the proposed change are critical factors in determining whether prior notice to owners or approval of owners is required.

Changes to the Common Elements by Owners

The Act does not vest a right in an owner to make changes to the common elements (including exclusive-use common elements). Instead, the Act provides for a mechanism whereby an owner can make changes to the common elements so long as the owner complies with the requirements set out in section 98 of the Act.

Section 98 of the Act provides that owners cannot make changes to the common elements unless they first 1) obtain the approval of the board of directors and 2) enter into an agreement with the condominium corporation (known as the "Section 98 Agreement") which identifies who will have ownership of the change, and who will be responsible for insurance, maintenance, and repair.

The Act requires that any Section 98 Agreement be registered on title to the unit so that any obligations relating to the changes will be binding on the owner of the unit, and his or her successors in title. In order for the board of directors to be in a position to meaningfully consider an owner's request to make change to the common elements, it would be prudent for the owner to submit to the condominium corporation the plans, the specifications, and the permits (if any) setting out the details of the proposed changes to the common elements when seeking the board's consent.

The board of directors should then review the plans and specifications submitted by the owner, together with its engineers, and confirm that the proposed changes to the common elements:

1. will not have an adverse effect on units owned by other owners;
2. will not give rise to any expense to the condominium corporation;
3. will not detract from the appearance of buildings on the property;
4. will not affect the structural integrity of buildings on the property according to a certificate of an engineer, if the proposed addition, alteration or improvement involves a change to the structure of the buildings; and,
5. will not contravene the declaration or any prescribed requirements.

Pursuant to section 98(1)(c) and (d), and 98(2) of the Act, if the changes to the common elements relate to non-exclusive use common elements, and if the changes to the common elements will result in any costs to the condominium corporation, then a notice to owners and/or a vote of owners may be required in accordance with section 97 the Act, as discussed above.

It is important to keep in in mind that the Act only came into force in 2001. Prior to that time, under the predecessor legislation to the Act, there was no comparable mechanism governing owner-initiated changes to the common elements. In most cases, such changes were typically carried out in accordance with the condominium corporation's declaration. And, most (if not all!) declarations require owners to obtain board approval before making any changes (including installations or decorations) to the common elements.

But, what constitutes as an addition, al-

teration or improvement to the common elements?

In *Wentworth Condominium Corp. No. 198 v. McMahon,* the issue before the Court was whether a hot tub installed on the exclusive use common element ground floor patio was captured by section 98 and required board approval.

The application judge found in favour of the unit owner – that is, the hot tub was not an addition, alteration or improvement and therefore excluded from section 98.

The corporation appealed. The Court of Appeal agreed with the application judge's conclusion: i) the hot tub was not an addition because it was not connected to the structure; ii) the hot tub was not an alteration because it was not a permanent change to the structure; and iii) the hot tub was not an improvement because it was removable and therefore was not a permanent fixture that increases property value.

Do note that the hot tub was installed on a ground floor of a patio; therefore, unit owners who want to install a hot tub on the terrace of their 40th story penthouse suite may not be able to rely on this case for approval.

> Under the predecessor legislation to the Act, there was no comparable mechanism governing owner-initiated changes to the common elements

In *MTCC No. 985 v Vanduzer,* a unit owner installed a gazebo on her exclusive use common element terrace without attaching it to the terrace, contrary to manufacturer's specifications– without board approval and without entering into a section 98 agreement.

The Court, relying on the hot tub decision in McMahon, held that the gazebo was an addition to the common elements. The intended use of the gazebo was such that it would be considered an addition if it was installed properly. The improper installation did not change whether the gazebo is an addition, alteration or improvement. Accordingly, the Court ordered the owner to remove the gazebo from the common element terrace.

The decision in Vanduzer can be seen as closing a potential loophole that the McMahon decision may have created. That is, a unit owner cannot evade section 98 of the Act with respect to an object that would ordinarily be considered an addition, alteration or improvement simply by installing that object incorrectly.

As set out above, both the corporation and the unit owners have certain rights and obligations when it comes to making any changes to the common elements. It is recommended that each change be reviewed on a case-by-case basis, with help from legal counsel, to ensure that it is implemented in accordance with the Act.

Mike Spence
Business Development Manager
Trace Consulting Group Ltd.

Protecting Your Power

The Importance of Surge Protection Devices

Building owners and property managers need to be aware of the importance of these devices for protecting electrical power distribution systems and capital mechanical equipment

An electrical surge can occur from several sources including:

- Nearby external construction that could cause rolling blackouts or brown-outs throughout the neighbourhood
- Internal faults from electrical wiring within the building
- Lightning strikes
- Power grid faults

If the building were to undergo a surge spike within their electrical distribution, it could cause severe damage to multiple pieces of equipment that would require costly replacement. Surge protection is a system or a device that is designed to safe guard the building's mechanical equipment as well as the electrical distribution systems from surges. It regulates voltage, suppresses spikes, offers over-current protection, and maintains a clean and steady rate of power delivery.

This article will discuss the role of professional Engineers in developing and analyzing the building's electrical distribution, as well as design the surge protection plan to cover the building's most vital and costly equipment.

Surge Protection Project Sample 1

The condominium has been facing rolling brown outs that have caused management to worry about the capital equipment. After discussion with our engineers, the board has decided to ensure that the elevators, and new chiller unit, that had been purchased within the last year, are protected from any potential faults.

Figure 1 Surge protector installed at elevator splitter to ensure elevators are not affected by any electrical faults and to protect the elevator motors.

Figure 2 Surge Protector installed at chiller disconnect switch location. Device is currently up and running and is protecting the chiller from any electrical faults.

Surge Protection Project Sample 2

The condominium corporation consists of four high-rise towers. Each tower has its own electrical distribution system. The corporation hired our egineers to perform an investigation and to recommend vital equipment to be protected for all four towers. A surge protection device was added to the main switchboard responsible for the electrical distribution for the towers. In addition, surge protection devices have been added to multiple emergency panels, mechanical equipment panels, and elevator systems. A total of 24 surge protections devices have been added to the condominium corporation.

Figure 1 Surge protector installed at elevator distribution panel feeding various building pumps.

Figure 2 Surge protector installed at elevator panel location.

Figure 3 Surge protector installed at emergency lighting panel. External disconnect switch was used to accommodate the lack of space within panel.

Figure 4 Surge protector installed at make up air unit panel.

CCI Was There – Summer 2024

A Day on the

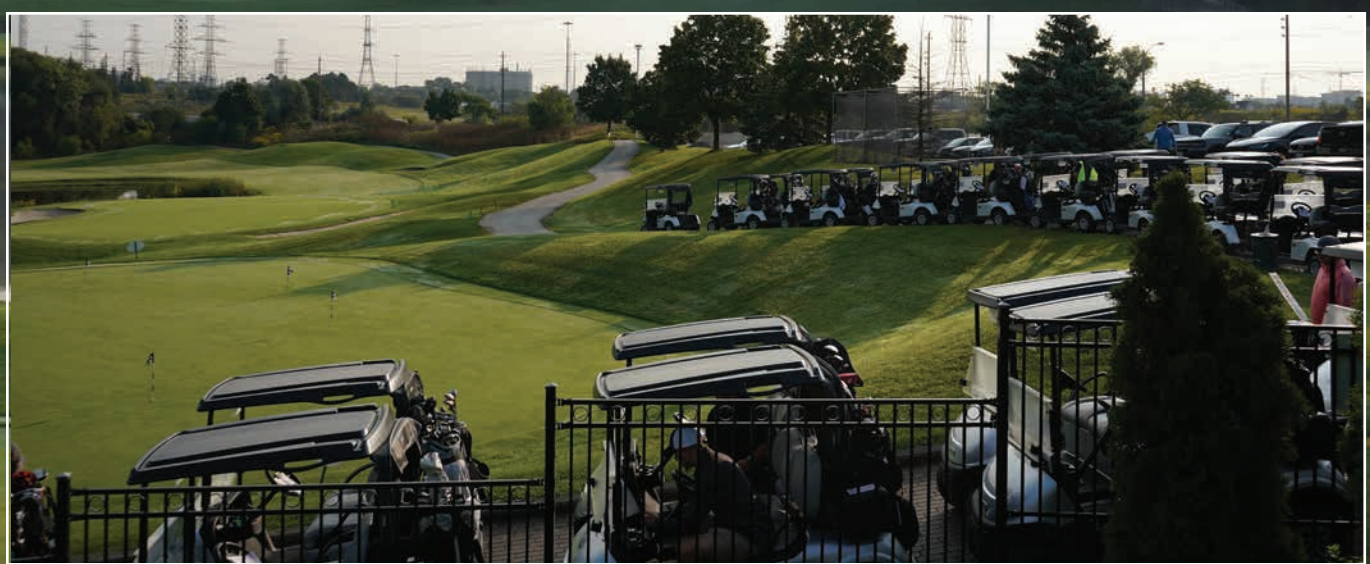
CCI Toronto's 2nd Annual Golf Tournament

This September, CCI Toronto held its sold-out 2nd annual golf tournament at the Royal Woodbine Golf Club. We'd like to send out a special thank you to our Title Sponsor, BFL Canada for helping us drive this event to success. 144 golfers started the day with a hearty breakfast as they watched a beautiful sunrise.

Links

Sepand Sarhaddar, Wayne Hong, Reuben Smith, Jason Odle

Register photo



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Stacey Kurck, Stephen Skolny, Theresa Place

Josie Gallucci, Cam Lawrence, Mitchell Switzer, Lauren McMath

Chapter President, Lyndsey McNally and Interim President, Brian Antman's creatively decorated cart added to the fun atmosphere, along with friendly competition and plenty of laughs shared between teams on the course.

We would like to thank the Royal Woodbine for their excellent hospitality. The course provided a great setting for our tournament, and everyone enjoyed a tasty lunch and dinner, which capped off a wonderful day on the course.

Throughout the tournament, participants competed in a variety of fun challenges, including The Men's Closest to the Pin, which Clement Chau won, and Women's Closest to the Pin which Heather Brooks won. The men's Longest Drive award went to Jason Gage, while Phylicia Barroo took home the Longest Drive award for women. Congratulations to all the winners!

"Thank you again for putting on one of the best-run tournaments that I have seen in years. It started early and ended early, which made for a great day."

– Winston Stewart, President & CEO of Wincon Security

We would like to thank all of our sponsors for their support in making this event happen. We also thank everyone who bought mulligans, which proceeds went to Habitat For Humanity.

The feedback from everyone was overwhelmingly positive, and we look forward to another great tournament next year. Stay connected by subscribing to our emails so you don't miss any updates or upcoming events!

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Odds & Ends

Upcoming Events

For Upcoming Events, visit CCI Toronto Calendar on the website:

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CCI Central

CCI Word Search Puzzle

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Advertiser's List

COMPANY	PAGE
4 Seasons HVACSolutions	36
ACMO	14
A.R. Consulting	52
Atrens-Counsel Insurance Brokers	42
Atrens Management Group Inc.	16
Berkley Property Management Inc.	52
Canlight	14
CityTowers Property Management Inc.	4
CondoSTRENGTH	12
DEO Condominium Lawyers	50
Dryerfighters	46
Duka Property Management Inc.	8
Elia Associates	2
First Service Residential	28
Folger Rubinoff LLP	22
Gardiner Miller Arnold LLP	57
Horlick Condominium Law	Outside Back Cover
ICON Property Management	6
JCO & Associates	22

COMPANY	PAGE
John Tan CPA Professional Corporation	52
KayCondo	41
Keller Engineering	42
Lionheart Property Management Inc.	56
Maple Ridge	24
M Condo Law	26
Morrison Financial Services Limited	42
Nadlan-Harris Property Management Inc.	34
Newton-Trelawney	20
Dynamic Property Management	20
Nordik Windows and Doors	42
Pretium Engineering Inc.	56
RJC Engineers	38
Shibley Righton	18
Summa	26
Suncorp Valuations	52
Synergy Partners Consulting Limited	42
Trinity Engineering and Consulting Inc.	10
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Joy Mathews, Lawyer
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The Last Word

Condominium Authority Tribunal – Then and Now

In 2015, I co-wrote a Condo Voice article about the future of what we now call the Condominium Authority Tribunal ("CAT") which started with this statement, "If Shakespeare was alive today, and owned a condo in Ontario (let's say Stratford), he would have ample material for a new play about disagreements".

I argued in that article that the proposed changes in the Act, which are designed to streamline condominium dispute resolution mechanisms, could well do the opposite.

Fast forward to 2024, nine-years later and…unfortunately…I was mostly correct.

Although the CAT's homepage states that it is "dedicated to helping condo owners and corporations resolve disputes conveniently, quickly and affordably", I have some concerns.

Let's look at the there three (3) visionary adjectives in turn.

"Conveniently": Yes for owners….anything but for corporations.

"Quickly": Hmmm….depends on the owner's appetite for reasonable settlement, it seems.

"Affordably": Yes, again, for owners… anything but for corporations.

The Government of Ontario sets the CAT's jurisdiction to hear disputes and it

ILLUSTRATION BY HENRIK DRESCHER

was effectively frozen from its inception in 2017 to 2020 to only include Request for Records complaints.

I was always and continue to be concerned about administrative bureaucratic problems which face similar administrative judicial bodies such as the Landlord and Tenant Board.

In fact, the Toronto Star picked up my 2015 article back then and an industry leading real estate lawyer supported my earlier views and commented that "Unfortunately, when a government uses words such as quick, impartial and inexpensive, my skepticism alarms go off. If the Landlord and Tenant Board is any example, the condominium dispute office will likely be slow, backlogged, expensive and biased."

Indeed, I am writing in the "rant" section of the Condovoice magazine, so it is difficult not to jump on the "CAT Hate Group Chat" that seems to be developing in the condo world.

However, unlike some, I truly believe that the CAT's trajectory is upwards towards its stated vision.

That said, there are a few practical (and, frankly, pretty straightforward) quick fixes, the low-hanging fruit, that can be implemented immediately for a better overall user experience, including:

Timetabling CAT Applications: *the courts do this, why doesn't the CAT?*

This helps all parties: applicants, respondents, and adjudicators. This is important for preventing owners from dragging out the process - for example, when owners have been unreasonably resistant to reaching a settlement agreement in mediation, despite there being no outstanding issues - there are negative consequences for everyone involved.

For example, when counsel are representing multiple clients at the CAT, we are inundated with CAT email updates, which can come in 24-hours per day, 7 days per week. Owners (the ones that may be employed) are likely working during the time that the adjudicator requests responses. And, adjudicators,

don't you wish to know when responses will be coming in... unless the CAT prefers the Foucault panopticon approach to discipline and punishment (if you don't know, look it up), then why the surprise game to scheduling.

Realistic Standardized Forms: *the best disinfectant is light, so they say.*

Why don't the CAT forms provide flexibility regarding the minimum time permitted to state redacted records? We recently represented a condominium corporation and the adjudicator decided against our client that one (1) hour was too long to redact a document, however that was the "minimum" permitted time on their standardized form....it felt like we were screaming into a tornado!

Weaponizing CAT Applications: *weak management watch out!*

Even if a CAT case is filed for a legitimate reason, an owner may take advantage of the process to attack weak management and try to include other issues outside the CAT's jurisdiction (such as governance). Group of owners can band together to each file CAT cases and capitalize on the same mistakes, as well as try to overwhelm management. For example, if several owners continuously submit records requests and the manager makes the same mistake when responding to all of them, then each owner can file CAT cases for the same reasons. Even if management learned its lesson about the proper procedure after the 1st case.

With a few tweaks and not a complete overhaul, the CAT may likely end up being like most things in our condo industry, reasonably incompetent...but, hey, it's better than the alternative. CV

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