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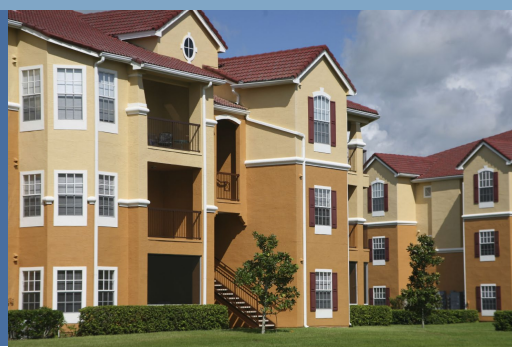

The Condo*Report*

In November 2010, Heenan Blaikie's Condominium Law Group launched the *Condo Reporter*, an online resource for perspectives on legal developments in the condominium community. On a quarterly basis we will be publishing the Condo Report, featuring the most popular articles from the blog. Enjoy!

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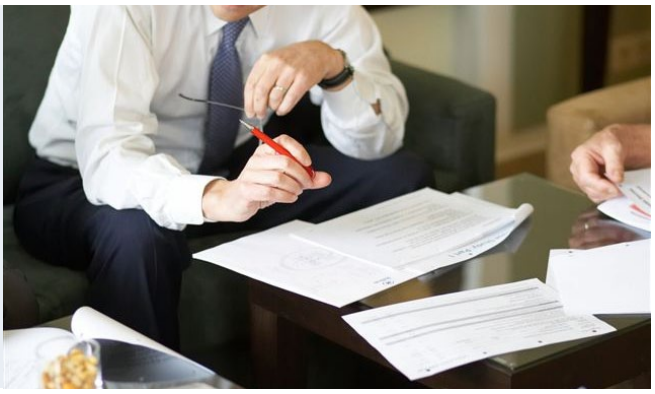


A recent article in the *Toronto Star*[1] about a property manager who bilked several condo corporations out of a total of $20 million dollars made the paper's front page headlines. It is alleged that the property manager defrauded one condo corporation by registering a bogus borrowing by-law on title, which enabled the manager to then borrow three million dollars against the property. Another condo corporation was the victim of a fraudulent bid for major repair work on the condominium. It is alleged that a corporation controlled by the manager submitted the lowest bid, but once the work started the contract price escalated, and the work was done by a subcontractor for half of the bid price. Apparently the manager was able to land the management contracts with the condo corporations by submitting bids that were lower than the others.

WHAT CAN A CONDO CORPORATION DO TO PROTECT ITSELF FROM FRAUD?

- Do thorough reference checks on all parties that the corporation is engaging, including the manager. Relying on personal impressions is risky. Fraudsters are frequently masters at schmoozing their victims.
- Beware of bids that are substantially lower than the others. As the old adage goes "If it sounds too good to be true it probably is." This applies not only to the management contract itself, but to all contracts for services.
- The management contract should obligate the manager to obtain a fidelity bond that will protect the corporation from any fraudulent act or omissions of the manager or the manager's employees. Ensure that the bond is renewed annually and a certificate from the bonding company is delivered to the board members annually. The bond should not be cancellable by either the manager or the bond insurer unless prior notice of cancellation is given to all board members (not in care of the manager). As for who is responsible for the premium costs to pay for the bond that is a matter to be negotiated with the manager.
- The management contract should prohibit the manager from engaging related companies to provide goods or services to the corporation.
- The condo corporation should not give the manager sole authority to sign cheques. At a minimum all cheques should be signed by one board member along with the manager.
- Board members need to be vigilant. Some frauds are conducted over a lengthy course of time. In order to avoid detection the fraudster needs to be constantly monitoring things and taking steps to cover up the fraud. Employees engaged in fraudulent activities are reluctant to take vacation time for fear that the fraud will be exposed during their absence. Management employees who do not take any vacation time or who seem to have an excessively lavish lifestyle should raise red flags.

In view of how the manager in the reported story was able to fraudulently borrow money in the corporation's name, perhaps corporations should consider instructing their legal counsel to conduct periodic and/or random title searches. Of course the manager cannot be privy to any information as to when and how often these searches are being conducted.

While the above measures may not completely stop a determined and clever fraudster who is willing to engage in forgery, hopefully they will make it more difficult for a fraud to be committed.

(Originally published on September 16, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/management-agreements/condo-fraud).

1 http://www.thestar.com/news/article/1054140

The Oppression Remedy

By Rod Escayola

A complaint that we often hear from condominium owners is that they feel they are being treated unfairly by the Board. Conversely, many owners or the condominium corporation may feel that the conduct of a single individual is so intolerable that it is oppressive to the community as a whole. Section 135 of the *Condominium Act*[2] provides an extraordinary remedy to both owners and condominium corporations in such cases of oppression or unfair treatment.

The oppression remedy serves the purpose of protecting everyone's *legitimate expectations* from conduct that is unlawful or from conduct that, while technically authorized, is considered unfair or oppressive. In such cases, the *Act* grants the courts "awesome" powers to make any order it deems proper, including an order prohibiting a specific conduct or requiring the payment of compensation.

Section 135 of the *Act* deals with three different kinds of conduct:

- Oppressive conduct;
- Conduct that is unfairly prejudicial; and,
- Conduct that unfairly disregards someone's interest.

What remedy is available when a condominium corporation treats owners unfairly?

Oppressive conduct usually requires an element of bad faith, meaning that the respondent took an action *knowing* that it was wrong or unfair. Lack of diligence, abuse of power and failure to cooperate are examples of bad faith. A recent case[3] dealt with a corporation's application against a unit owner who had engaged in significantly aggressive behaviour towards other unit owners and management. Relying on the oppression remedy and on the court's wide discretionary powers, the judge concluded that the owner's behaviour was coercive, abusive and oppressive. Acknowledging that the measure was drastic, the judge ordered the departure of this owner from the condominium, the sale of his unit and the recovery from the proceeds of the sale of the unit of the Corporation's costs in returning the unit to a state of fitness for occupation. The Court also ordered that the owner pay the Corporation's costs on a full indemnity basis and that all costs be deemed to be common expenses collectible from the sale of the unit.

Conduct that is *unfairly prejudicial* only requires that the complainant's rights be limited in an unfair or inequitable manner. It includes situations where two groups of owners in a similar situation receive different treatment by the Board. To illustrate this, one only has to think of a situation where the Board is allowing some owners to benefit from a privilege while refusing this same privilege to others.

Claims that conduct is *unfairly prejudicial* are often raised together with allegations of conduct that *unfairly disregards someone's interests*, the latter being found when one's interests are unjustly ignored or treated as being of no importance. An example of this was discussed in a case[4] where a condominium complex was comprised of both commercial and residential unit owners. Although the "commercial directors" were removed from the board in a legal majority vote, the commercial directors sought and successfully obtained a declaration that their removal from the board was unfairly prejudicial to them and unfairly disregarded their interests.

2 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98c19_e.htm#BK163

3 http://www.canlii.org/en/on/onsc/doc/2011/2011onsc2365/2011onsc2365.html

4 http://www.canlii.org/en/on/onsc/doc/2007/2007canlii31573/2007canlii31573.html

There are however limits to recourse to the oppression remedy, as this remedy only protects *legitimate expectations* as opposed to "wish lists." For instance, the courts will balance the owner's objectively reasonable expectations with the Board's statutory authority to govern and duty to exercise judgment in making decisions. The court discussed the requirement to strike this balance in a 2009 case[5] where an owner made an application for the removal of a new walkway servicing the parking lot, arguing that it was unnecessary, oppressive and interfered with his privacy. The court held that the decision of the Board was not oppressive because the old walkway presented legitimate safety issues and that all other options had been carefully considered by the Board.

The oppression remedy is aimed at balancing reasonable expectations and conflicting interests, often in order to protect individuals when the rule of majority is unfair to them. The oppression remedy can also serve to give relief to a corporation dealing with recalcitrant owners. In light of the existence of this remedy, it is paramount that condominium corporations treat everyone fairly and apply the same rules to everyone. A corporation cannot, for instance, allow some owners to disregard the rules and only enforce them against other owners. It is important for the Board to be consistent and fair.

Special thanks to Julie Robinson for co-authoring this blog post.

(Originally published on July 18, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/board-of-directors/what-remedy-is-available-when-a-condominium-corporation-treats-owners-unfairly).

5 http://www.canlii.org/en/on/onsc/doc/2009/2009canlii19932/2009canlii19932.html

Enforcement of Pet Rules – Something New!

By Barbara Holmes

Most condo corporations have rules that state that pets are not permitted to soil on the Corporation's property and owners must clean up after their pets. Despite rules like this, dog poop is often found on condo properties, particularly in the winter months when the short daylight hours enable offending pet owners to breach these rules "under cover of darkness."

The Toronto Star[6] recently reported about a service being offered to US condo associations to identify delinquent owners. PooPrints[7] is a dog identification service that maintains a private dog DNA data base for each property, so that any dog poop found on the property can be matched with the culprit. Dog owners are required to register their pets with management, pay the registration fee and provide their dog's DNA sample by way of a cheek swab. When management finds poop on the property a sample is sent to the lab in Tennessee to indentify the offending dog from the condo's dog database. The cost of the lab analysis is charged to the owner of the unit in which the dog resides. PooPrints also provides a unique pet identification tag for each dog to wear on its collar so that it is easy for management to confirm if a dog has been registered.

In the US condo associations are imposing hefty fines on owners whose pets soil the condo property, with the hope that the fines will be a deterrent to future breaches. While condo corporations in Ontario are unable to fine owners for a breach of the rules, this type of service can assist condo corporations in enforcing their rules, as it will enable them to identify those owners who are not complying. However, before going ahead with this type of service, condo corporations will need to

6 http://www.thestar.com/article/455144

7 http://www.pooprints.com

amend their rules to require that owners register their dogs and provide the cheek swab and to specify that unit owners are responsible for paying the registration fee and the costs related to the DNA analysis of the poop sample. Such rules could also specify that after a certain number of violations, as supported by the DNA evidence, the dog will be deemed to be a nuisance animal and must be removed from the property. We expect that once these rules are circulated to the unit owners this will stir up considerable controversy, particularly among dog owners!

(Originally published on June 30, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/enforcement/enforcement-of-pet-rules---something-new/).

Enforcement of Condominium Declarations

By Shawn Pulver

Of all the various responsibilities of a condominium board, perhaps none is as important as ensuring that its unit owners are in compliance with the terms of the corporation's Declaration, Rules and applicable By-laws.

Given the significant increase in the number of new condominium developments in Ontario, it is not surprising that there has been a corresponding increase in the number of "compliance"[8] proceedings commenced by condominium corporations against defaulting owner(s).

Recently, in the case of *Peel Condominium Corporation 108 v. Young*,[9] the condominium corporation commenced an Application before the Ontario Superior Court of Justice against a unit owner to enforce its Declaration. The issue here was that the unit owner installed a tankless gas water heater in her unit, without the consent of the Board. The reason why the consent was necessary was that the owner constructed a vent through the outside wall of the unit, which formed part of the common elements of the building. Under the Declaration, the unit owner was to obtain the consent of the Board prior to making any changes to the common elements.

The condominium corporation took the position that this change was a clear contravention of the Declaration, and that the unit owner should be ordered to remove the vent. The unit owner took the position that there had been "selective enforcement" by the Board, and that there had been past breaches of the Declaration by other unit owners that did not lead to compliance proceedings.

Although the court found that there had been "a degree" of selective enforcement by the Board in the past, this was ultimately not justification for the fact that the unit owner in the present application was in breach of the Declaration. According to the Court, "there is an interest, in the collective, in having the Declaration enforced, even if some transgressors have been allowed to violate it."

This case is another important reminder to unit owners of the importance placed by condominium corporations in ensuring that unit owners comply with the Declaration, Rules and By-laws.

(Originally published on June 29, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/bylaws/enforcement-of-condominium-declarations/).

8 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98c19_e.htm#BK162

9 http://www.canlii.org/eliisa/highlight.do?text=peel+Condominium+Corporation+108+v.+Young%2C&language=en&searchTitle=Ontario&path=/en/on/onsc/doc/2011/2011onsc1786/2011onsc1786.html

Requisition to Remove Directors – Defamation

By Denise Lash

Owners who take part in signing a requisition to remove a director should be carefully reviewing what they sign or they may be finding themselves involved in a lawsuit where they could be held personally liable.

This was the case in a recent Small Claims Court decision, *Swan v. Goan*, involving a requisition to remove a director [10]and the commencement of five separate claims by the President of the board against two other board members, the condominium corporation and the property manager.

The requisition to remove the President listed the following reason for his removal:

> "failure to act honestly and in good faith, and failure to exercise the care, diligence and skill that a reasonably prudent person would exercise in the circumstances."

These words come directly from the director's Standard of Care provisions in Section 37(1)[11] of the *Condominium Act.*

The defendants stated that the requisition wording were expressions of their opinion, fair comment, and were made without malice. It was noted that the President did the following:

1. He erected a satellite dish on the roof of his unit contrary to Section 98 of the *Condominium Act* and refused to remove it.
2. Without consulting the other board members and despite the other members objections, the President continued to demand the records for the condominium corporation from management.
3. The President sent threatening e-mails to management and one of the board members.
4. The President without a resolution of the board, sent an e-mail terminating the management agreement.
5. Without the knowledge of the other board members, the President sent an e-mail to unit owners, on the condominium corporation's letterhead, advising that "*it appears that both the current and past Boards have disregarded many of the rules and regulations of both the Condominium Act* and the *By-laws of DCC 45.*"
6. The President accepted service of his claim against the condominium corporation but did not notify the other board members until after the expiration of the 20 time limit for filing a defence.
7. The President parked in the visitor parking area and used his assigned parking space for a second vehicle.

The Court noted that in order to be successful in a defamation action, three things must be proven:

1. that the impugned words were defamatory, in that they would tend to lower the President's reputation in the eyes of a reasonable person;
2. that the words in fact referred to the President; and
3. that the words were published, meaning that they were communicated to at least one person other than the President.

The Court found that that the requisition was circulated to the unit owners and that it was clear that the reasons for removal related to the President. The issue was whether the statements made in the requisition were defamatory. The Court found that they were not and dismissed all the claims.

The Court did note that even if any of the defendants defamed the President, then the court would have assessed the damages in the amount of $2.00 as the President did not introduce any evidence to establish damage to his reputation.

10 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98c19_e.htm#BK57

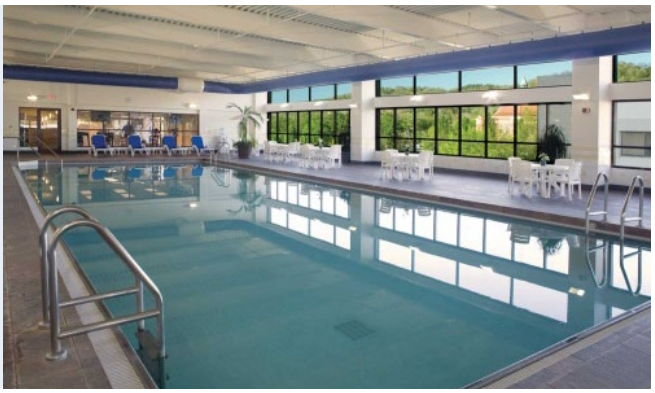
11 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98c19_e.htm#BK46

This case is important in that it clearly shows that unit owners, board members and property managers, should ensure that where they are involved with a requisition to remove one or more board members, the reasons set out should be carefully reviewed, preferably by legal counsel, to avoid allegations of defamation and a potential claim.

(Originally published on December 21, 2010 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/board-of-directors/requisition-to-remove-directors---defamation/).

Condo Swimming Pools – Fun For All?

By Barbara Holmes



Now that summer is here many condo residents are enjoying the use of swimming pools which form part of the common facilities available for use by the residents of the condominium. A recent case by the Ontario Human Rights Tribunal, *Pantoliano v. MTCC No. 570 and YCC No. 531*[12], considered whether two condo corporations (who share a pool) could enforce rules that restricted the hours during which children were allowed in the pool, and prohibited children under the age of two and persons wearing diapers from using the swimming pool.

The applicant was the mother of a ten-month old baby who was asked to leave the swimming pool on numerous occasions on the grounds that babies were not allowed in the pool. The majority of the residents of both condominiums were senior citizens. The condo corporations' position on the rule prohibiting children with diapers from using the pool, was that it was necessary as there were serious concerns about the potential health risks resulting from urine/fecal contamination in the pool, which risks were heightened for elderly persons who are more vulnerable to infection.

The condo corporations had the burden of establishing that both rules were reasonable and bona fide and that lifting the rules would cause undue hardship to the condo corporations. The Adjudicator felt that the condo corporations did not satisfy this burden and that the rules were discriminatory on the basis of family status.

No direct evidence was presented as to why lifting the rule restricting the hours during which children could use the pool would result in undue hardship for the condo corporations. The Adjudicator determined that the condo corporations did not have protocols in place to reduce the risk of health problems at the pool facility and that based on the evidence that was presented, the health risks in allowing children in diapers to use the swimming pool was extremely small. The Adjudicator commented that the witnesses presented by the condo corporations did not have expertise in the area in which they were asked to provide evidence and in particular, they did not have expertise in health risks associated with recreational water or risk-reduction nor did they have any experience in swimming pool design, maintenance or operations standards or expertise in the laws governing the operation of pools in Ontario or elsewhere. This leads us to believe that perhaps the decision may have been different had the condominium corporations provided more qualified experts to give an opinion on the potential health risks.

The Adjudicator awarded the applicant damages in the amount of $10,000.00 and directed the condo corporations to revise or repeal the offending rules. It is interesting to note that the applicant had already moved out of the condominium by the time that this case was decided and that the applicant was self-represented. Also, the damages award was imposed against both of the condo corporations jointly and severally, not just against the condominium in which the applicant resided. The Adjudicator also specifically stated the decision relating to children wearing diapers only applied to the

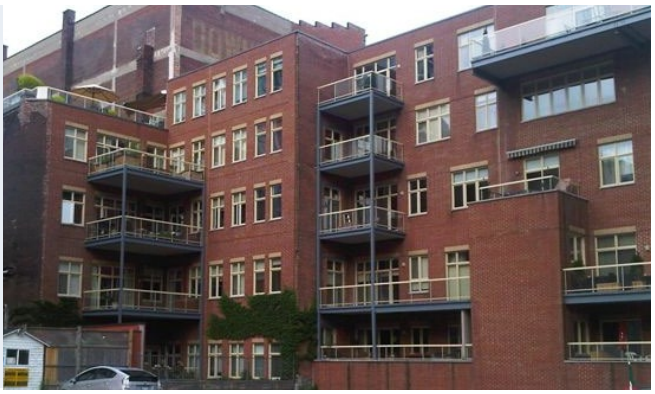
12 http://www.canlii.org/en/on/onhrt/doc/2011/2011hrto738/2011hrto738.html

swimming pool and the decision did not address this same restriction vis-a-vis the whirlpool.

(Originally published on July 14, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/human-rights/condo-swimming-pools---fun-for-all/).

Condos in Financial Crisis

By Denise Lash



Over the past few years, more and more condominium associations in the U.S. have had to deal with issues that most have never had to face before; owners walking away from their condominium units due to the economic downturn and associations unable to meet their operating expenses because maintenance fees have not been paid by the owners.

Fortunately in Canada, condominium corporations have rarely had to face similar circumstances. Although owners may fall into arrears from time to time, most condominium corporations are able to secure the payment of those expenses by lien and have those arrears either paid by a mortgagee or the owner. The collection process enables the condominium corporation to collect arrears and pay the operating expenses to properly maintain the property.

Although the *Condominium Act* [13] requires that condominium corporations conduct a reserve fund study and implement a plan for funding the reserve fund, there are some boards that ignore those requirements and continue to be motivated by "low maintenance fees." The result is that those condominium corporations produce annual budgets which fail to address required maintenance and repairs and then do not collect funds from the owners for current and future repairs. This in turn, creates a situation in which there is a size-able deficit in the corporation's operating expenses, depleted or no reserve funds and extensive repair costs to bring the property into a livable condition. It is at that point that owners find themselves in a situation in which they have little choice but to either walk away from their investment or contribute substantial funds to carry out the repair costs. The sad part is that those owners who decide to pay the required funds, will have little chance of recouping those monies paid if they were to resell their unit in the very near future.

This is the case with York Condominium Corporation No. 506[14], where the board should have raised common expenses many years ago to keep up with the operating expenses and the much needed repairs. These current owners are now paying for the mistakes of the previous boards.

On April 21, 2011, an application was brought before the Superior Court of Justice-Ontario, to appoint an Administrator to deal with the multitude of problems facing this condominium corporation. Just to name a few:

- Operating Deficit of $670,000 which included arrears of water and gas charges
- No reserve fund
- Urgent repairs required to garage – $1.7 million
- Urgent roof repairs and roof anchors required
- 40 units with mould- urgent repairs required
- Balconies unsafe; urgent repairs required
- Many owners in arrears of maintenance fees and/or continually late

13 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98c19_e.htm

14 http://www.canlii.org/eliisa/highlight.do?text=ycc+506&language=en&searchTitle=Ontario&path=/en/on/onsc/doc/2011/2011onsc2839/2011onsc2839.html

It will be interesting to see what the Administrator can accomplish and whether things can turn around for this condominium corporation. This situation would not have occurred if the board and property management had complied with the *Condominium Act*. Unfortunately, there is not much that owners can do if faced with this type of situation other than to commence legal proceedings to compel the board of directors to carry out their duties and obligations as directors or to appoint an Administrator. The outcome of those proceedings could result in the finding of personal liability on the part of any directors who contributed to the present state of the condominium corporation.

(Originally published on May 23, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/board-of-directors/over-the-past-few-years).

There's a cell phone tower on my condominium roof!

By Rod Escayola

There have been many studies over the past few years about the potential impact cell phone towers erected near residences may have on humans. Some scientists have reported that long term exposure to Radio Frequency (RF) energy used to communicate from cell phones to towers can lead to changes in brain activity, brain reaction times and the time it takes to fall asleep. On the other hand, Health Canada[15] has reported that the general consensus in the scientific community is that the RF energy is too low to cause health effects in humans and that contrary scientific findings have not yet been confirmed. Nevertheless, Health Canada has established guidelines for safe human exposure to RF energy in their Safety Code 6.[16] Industry Canada, the federal regulator responsible for the approval of RF equipment, has adopted Health Canada's guidelines as their regulatory exposure standard.[17] Antenna proponents are required to perform an assessment of RF exposure on proposed antenna systems before their installation in order to ensure compliance with these policies.

Without picking sides in this scientific debate, we are often requested to advise on the question of whether a condominium corporation can install a cell phone tower on the Condominium roof or on the property. Such an important change can create confusion and friction within the condominium community and must be approach carefully and with tact.

CAN THE CONDOMINIUM CORPORATION INSTALL A CELL PHONE TOWER ON MY ROOF?

The *Condominium Act*[18] provides that either the condominium corporation or an owner may make an addition, alteration or improvement to the condominium's common elements, such as the roof. The most common method for the Corporation to proceed with such an "addition, alteration or improvement to the common element" is by providing notice to the owners describing the proposed alteration, advising them of the estimated cost of the proposed alteration and advising the owner of their right to requisition a meeting of the owners within 30 days of the notice.

However, if the alteration constitutes a "substantial change" in the assets of the corporation, the corporation is required to obtain a favourable vote from the owners who own at least 66 2/3 per cent of the units of the corporation. A change is usually considered "substantial" if its estimated cost, whether

15 http://www.hc-sc.gc.ca/ewh-semt/radiation/cons/stations/index-eng.php

16 http://www.hc-sc.gc.ca/ewh-semt/pubs/radiation/radio_guide-lignes_direct-eng.php

17 http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf01904.html

18 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98c19_e.htm

incurred before or after the current fiscal year, exceeds the lesser of 10 per cent of the annual budgeted common expenses for the current fiscal year or if the board elects to treat it as substantial. Considering the reaction that cell phone towers often trigger, the preferred method is to treat this change as a substantial one even if there is no cost to the corporation.

Often, cell phone providers propose to rent part of the common element from the condominium corporation in order to operate its tower. The rent paid is sometimes used to increase the reserve fund contribution, to offset the cost of new projects or may even be used to offset increases to common expenses. To do so, the Condominium corporation is required to pass a by-law, which must be approved by vote by a majority of the unit owners. The by-law would set out the purpose of the lease or easement.

The proposal to install a cell phone tower on the roof is almost certain to spark passion and reaction. It is necessary to obtain the owner's assent, one way or the other, and it will surely require tact and openness on the part of the Board.

(Originally published on February 13, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/bylaws/theres-a-cell-phone-tower-on-my-condominium-roof/).

Leaking Balcony Enclosures – Who is Responsible?

By Denise Lash

In Kelowna B.C., Lloyd Guenther, who purchased a condo with his wife in 2003, was so frustrated with the Strata Council's inaction in addressing water leaks on the owners enclosed balconies and the building envelope issues which he felt were caused by the enclosures, that he applied to the Supreme Court of B.C.[19] to have an administrator appointed.

All but one of the 41 units in this three-storey building, had enclosed balconies that had been constructed in the 80's. It was when roof repairs were carried out in 1998, that complaints about water problems on the balconies first started.

The Strata Council had carried out various investigations of the building envelope and took the position that the owners were responsible for any leaking caused by their balcony enclosures. They concluded that no further investigations needed to be done on the building envelope.

The Court held that since no by-law was enacted which would shift the responsibility of maintenance and repairs of the balcony enclosures to the owners (specific to B.C. legislation), it found that the Strata Council was, therefore, responsible for the leaks caused to the enclosed balconies.

Justice Barrow in determining whether the Strata Council breached its duty to properly address the building envelope issue, set out the following factors that he considered to be key in determining whether the Strata Council had acted "reasonably":

- likelihood of the need to repair
- cost of further investigation
- gravity of harm sought to be avoided or mitigated by investigating or remedying any discovered problems

Based on the steps that the Strata Council had taken, the court did not find that the Strata Council had breached its duty.

19 http://www.canlii.org/en/bc/bcsc/doc/2011/2011bcsc119/2011bcsc119.html

The Court also found that there was no need to appoint an administrator as the parties would now know their respective responsibilities.

In Ontario, balcony enclosures, are usually part of a unit owner's exclusive use common element and are considered alterations to the common elements that require a Section 98[20] indemnity agreement. Section 98 requires that these agreements be registered on title. The purpose of having these agreements in place is so that maintenance and repair responsibilities are clearly defined, that insurance obligations are specified, ensuring construction guidelines are in place and dealing with indemnification should damage occur. Where owners have constructed balcony enclosures prior to the date that Section 98 agreements were required (May 2001), boards of directors are still taking steps to get Section 98 agreements signed in order to avoid disputes down the road should the alteration require maintenance, repairs, or further changes. It is recommended that condominium corporations proceed in this manner to avoid costly disputes and lawsuits.

It is unfortunate that this matter ended up before the courts at substantial costs to the owners. Although the lawsuit may have resulted in clarification as to the responsibilities for maintenance and repairs, the period of time from when the conflict arose to the decision date, impacted on all the residents[21], many who were seniors living on fixed incomes and who were troubled by the threat of increased maintenance fees and special assessments.

(Originally published on March 22, 2011 on the Condo Reporter blog. To read comments and/or to leave one, please visit: http://www.condoreporter.com/maintenance-and-repairs/in-kelowna-bc-lloyd-guenther/).

20 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98c19_e.htm#BK119

21 http://www.kelownadailycourier.ca/top_story.php?id=287342&type=Local

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Announcements

The Condo Report is pleased to announce that **Jason Rivait** has joined Heenan Blaikie's Condominium group as an associate in Heenan Blaikie's Business Law group. Jason practices in the area of real estate with a concentration on condominium law.

Jason has advised condominium corporations, developers and unit owners in a variety of matters including, but not limited to, document drafting and interpretation, enforcement proceedings, the collection of common expenses and all other matters relating to the *Condominium Act*, 1998.

Prior to joining Heenan Blaikie, he worked as an associate in the condominium practice group at another major law firm. We would like to welcome Jason to Heenan Blaikie LLP. Please look for blog posts on the Condo Reporter Blog from Jason in the near future.

Denise Lash will be presenting at the 15th annual Condominium Conference at the Toronto Congress Center on November 4th and 5th, 2011. The theme of this year's conference is "Living in Balance: Corporation and Community" and Denise will be part of a panel that will discuss this year's most interesting case law developments on November 5th at 12:30 pm. For more information, please visit: http://www.condoconference.ca.

Denise Lash, Shawn Pulver, Jeremy Warning and **Christian Paquette** were presenters at the Simerra Property Management's Annual Client Seminar on Thursday, October 13, 2011 at the Novotel Hotel in Toronto. The presenters discussed human rights issues, managing noise complaints, effective communication methods and occupational health and safety perils when contracting work to 100 board members for Simerra-managed condominium corporations. You can view their presentation on the Condo Reporter Blog.

Heenan Blaikie

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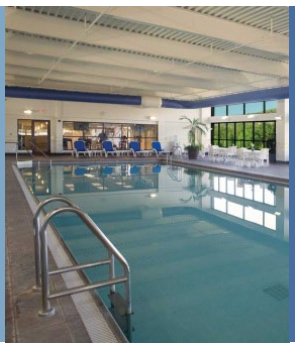

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