



Condo Law eBulletin

A NEWSLETTER FOR THE CONDO COMMUNITY

Condo Group

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Welcome to the inaugural Shibley Righton LLP Condo Law eBulletin. We'll bring you periodic updates on what's new in condos, from important news to recent developments in caselaw.

- Armand Conant

Municipal Assessments- Appeals Due March 31, 2013

Armand Conant

Many of our clients have asked us to appeal the property tax assessments for units owned by the corporation, including guest suites, superintendent suites, shared facilities units, mechanical switching rooms. (A condo corporation may also appeal the assessments owners' units on behalf of unit owners, but doing so requires a by-law.) If you are considering an appeal, the deadline for submitting a Request for Reconsideration is **March 31, 2013**. Be careful not to miss it!

Elevator Class Action- Claim Forms Due March 29, 2013

John De Vellis

In September 2012, Northern ThyssenKrupp companies settled a class action lawsuit that had been commenced as a result of faulty sheave jammers manufactured by Northern Elevators (now part of the ThyssenKrupp companies). Under the settlement owners or former owners of elevators that were fitted with ThyssenKrupp/Northern sheave jammers may be entitled to compensation if they: i.) incurred expenses as a result of replacing the sheave jammer with an alternative form of secondary braking device as was required by TSSA Order 207/06; and (ii) they did not opt out of the class action on or before May 31, 2012. For more information, check out the elevator class action [website](#).

In order to receive compensation, you must submit a [claim form](#) by **March 29, 2013**.

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Check Your Directors' And Officers' Insurance Policies

Deborah Howden

If you haven't checked your Directors' and Officers' ("D&O") insurance policy lately, you may be surprised to find that the level of coverage is not what you think. For example, while most D&O policies cover reasonable defence costs in cases of allegations of discrimination against a director, some policies will only reimburse the director for legal fees if a court determines that the complaint against the director has no merit or if the case is dismissed, but only where no payment is made to the complainant. In practice, these types of policies provide very little benefit to the director: he/she is forced to defend a complaint all the way to trial or hearing (and take the risk of an unfavourable result) even if the cost of doing so is greater than the cost of settling. On the other hand, other D&O policies provide complete defence costs, whether or not there is an unsuccessful action or complaint.

Condominium corporations and board members should review their insurance coverage to ensure adequate protection in the event of a claim or loss. Directors have enough to worry about directing the important work of the corporation. Inadequate coverage can be a distraction to board members and may also deter potential board members from joining the board.

RECENT DECISIONS:

Large Legal Cost Award Against Owner

Chan v. TSSC No. 1834

John De Vellis

In recent months a number of decisions have been released that have been a warning to condominium corporations about seeking excessive costs in compliance matters. This decision, in which the Ontario Court of Appeal dismissed the unit owner's appeal from a decision of the Superior Court, is a good reminder to unit owners: making frivolous legal arguments to thwart a condominium corporation's enforcement of its declaration and rules can be very costly. The unit owner filed an application challenging a lien that had been registered against title to her unit as a result of a water leak that caused \$8,502 in damage. The corporation also brought an application to enforce the single-family use restriction set out in the Declaration and order the removal of locks installed by the owner on some of the interior doors in her unit. The corporation was successful on both counts and was awarded **\$41,706** in costs. (Although the costs award was on a 'full indemnity' basis, the corporation may still seek compensation for its 'additional actual costs' under s. 134(5) of the *Condominium Act, 1998*.) The Court of Appeal upheld the application judge's decision and awarded an additional \$7,000 to the condo corporation.

Condo Act vs. Landlord and Tenant Board

York Region Condominium Corporation No. 639 v. Lee

John De Vellis

In a welcome decision, the Ontario Divisional Court has over-turned a puzzling decision of the Ontario Landlord and Tenant Board that could have set a dangerous precedent for condominium corporations. The corporation owned a superintendent suite that was formerly occupied by a resident superintendent. As of April 2007 the corporation was serviced by an off-site superintendent and the corporation rented the superintendent suite to the existing tenants. In 2012 the corporation decided to again employ an on-site superintendent and gave the tenants a notice of termination of their tenancy. The corporation relied on section 48 of the *Residential Tenancies Act, 2006*, which is a commonly-used provision allowing owners of a rental unit to terminate a tenancy on the basis that they require the unit for their own use. The tenants challenged the notice of termination. The L&T Board sided with the tenants and found that the corporation could not require a rental unit for its own use. The Board said that previous caselaw that had allowed corporate landlords to rely on the "own use" provision applied only where there was only one shareholder of the corporation. The Divisional Court over-turned the decision, finding that a corporation can, through its officers, directors, employees or agents, occupy a unit for purposes incidental to its functions as the landlord of a building.