

# Let's Talk Condo...

Pages 227-230

## MOULD REMEDIATION

### Announcement:

We are pleased to announce, effective February 20, 2006, the Toronto office of Miller Thomson LLP will relocate to new premises.

Our new mailing address will be  
Miller Thomson LLP  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1  
T: 416.595.8500  
F: 416.595.8695

Our phone numbers, fax numbers and postal code will remain unchanged.

### in this issue...

Mould Remediation .....227

Tips for the New Year .....228

MondoCondo 2005  
York Event Theatre .....229

Avoiding Human Rights  
Complaints .....229

**ONTARIO'S LEADING  
CONDOMINIUM LAW  
PRACTICE**

**MILLER  
THOMSON** LLP  
Barristers & Solicitors  
Patent & Trade-Mark Agents



by  
*Audrey M. Loeb*  
416.595.8196  
aloeb@millerthomson.com

In a recent case, a dispute arose between a condominium corporation and three of the unit owners over the issue of mould remediation of fan coil units which are located in the suites. It is an important case because it highlights the need for boards of directors to act reasonably and not take positions which are intractable.

In this condominium, the declaration provides that the unit owners are responsible for the maintenance and repair of their fan coil units. The issue was if the unit owners remediated their fan coil units themselves the corporation could insist on a "higher" level of remediation. There are various levels of mould remediation with Level 5 being the highest and most expensive form of remediation and Level 1 the lowest and least expensive. The prices for remediation ranged from \$1,500 for Level 5 remediation to \$150 for Level 1.

There was no evidence that the mould in any one unit would cause risk of damage or injury to any other unit as there was no scientific evidence that the mould could "travel" to other units.

The only people who would be affected by the choice of manner of remediation would be the unit owner in whose suite the fan coil was located.

The corporation insisted that all units do a Level 5 remediation. Three of the unit owners refused to conduct a Level 5 remediation. They instead chose to do a Level 1 remediation. Evidence was presented at trial that this was not as thorough a remediation as a Level 5 remediation but a letter was provided from the company which did the Level 1 remediation indicating that the fan coil units were free of mould. The corporation was not satisfied with the Level 1 remediations. The three unit owners refused to do more.

The corporation brought an application in court seeking an order that the remediation carried out by these three unit owners was inadequate and that further remediation needed to be carried out at their expense. The court found in favour of the three unit owners and held that the condominium corporation was acting unreasonably in forcing a Level 5 remediation on the unit owners when a Level 1 remediation was adequate and there was no risk of danger or loss of market value to the units in the building as a result of the failure to carry out a Level 5 remediation.

Not only were the unit owners successful but the court awarded costs against the corporation.

We are pleased to announce that the 2nd edition of "The Condominium Act: A User's Manual", authored by Audrey Loeb, is now available from Carswell Publishing. To obtain a copy, please call: (416) 609-3800 or 1-800-387-5164, E-mail orders at carswell.orders@thomson.com; ISBN: 0-459-24273-3; \$75.00

# TIPS FOR THE NEW YEAR



by  
Warren D. Kleiner  
416.595.8515  
wkleiner@millerthomson.com

## Enforcement

**T**he Court of Appeal recently dealt with a situation where a corporation tried to enforce a no pet provision in a declaration against a resident with a cat. In the case of *Metropolitan Toronto Condominium Corporation No. 949 v. Staib*, the resident lived in her unit with a cat for ten years. It was only in 2004 that the board decided to step up enforcement of the no pet provision in the declaration. The court decided that it would be inequitable, given the facts of the case to enforce the declaration provision against the resident. This case may have implications in terms of a board's obligation to enforce the provisions of a declaration. There are many situations where corporations have not actively or consistently enforced declaration provisions. Tip - If a board wants to start enforcing a provision that hasn't been enforced, such as a restriction on pets or on a use of a unit, consideration may have to be given as to whether the corporation will have to 'grandfather' any existing situations.

## Status Certificates

The review of a status certificate and the accompanying documents is an integral part of virtually all condominium real estate transactions, much like house inspections in non-condominium residential transactions. Most transactions are conditional on reviewing and being satisfied with a status certificate. It binds the corporation as of the date it is issued against a purchaser or mortgagee, who relies on it.

Tip - Boards and managers should pay particular attention to the budget portion of the status certificate.

This is where information about potential special assessments and increases in common expenses are dealt with.

Paragraph 9 contains a statement as to whether the current budget is expected to result in a deficit or surplus, and how much the deficit or surplus is expected to be. Many corporations complete paragraph 9 by stating that it is not expected that there will be, or that it is not known as to whether there will be a surplus or a deficit, and that the corporation has no control over any as yet unannounced increases in utility rates, increased labour and material costs and any other cost factors, which are beyond the normal budgetary controls of the corporation. This likely does not constitute adequate disclosure in many circumstances, for example, where there is already an accumulated deficit in the fiscal year the status certificate issued or known expenses to be incurred that have not been budgeted. Paragraph 11 is where special assessments that have been levied must be disclosed. In paragraph 12 the certificate is required to disclose whether there is knowledge of any circumstances that may lead to an increase in common expenses. Even though the board may not have levied a special assessment, or set a budget increasing common expenses, there are many situations where a board does have knowledge of circumstances that may lead to an increase in common expenses - knowledge that should be disclosed in a status certificate. Where there has not been proper disclosure in a status certificate, it may be difficult to collect a special assessment or increase in common expenses from a new owner who challenges it.

It is important to continually review and update the information being put into status certificates. Management companies that prepare status certificates on behalf of their boards need to be aware that most management contracts provide that when entitled to the fee for issuing a status certificate, the management company is also responsible for errors or omissions in them.

## QUICK TIP

Every condominium corporation should update its address for service in the Land Registry Office. This is important to ensure that the corporation receives legal notices such as notices of *Planning Act* applications by adjoining property owners, Notices of Expropriation, etc.

# MONDOCONDO 2005 YORK EVENT THEATRE



by  
*Denise Lash*  
416.595.8513  
dlash@millerthomson.com

Condominium owners and professionals were treated to a glimpse of the future at the first annual MondoCondo party at the York Event Theatre in Toronto on Wednesday, November 23, 2005. The inaugural event drew together over 600 people from all walks of condominium life to network, mingle, enjoy delicious food and drinks and view a ten minute teaser of the new MondoCondo TV show currently in development. Deputy Mayor of Toronto Michael Feldman and Jim Ritchie, President of Tridel, welcomed guests to the event and shared their positive outlook on the future of Toronto's burgeoning condominium market coincidentally, on the same day that the National Post reported that condominium sales in Toronto would set a new record in 2005 and declared Toronto to be "the city of condos".

Throughout the evening, guests were treated to entertainment provided by the Rio Samba dancers, interactive dancers and percussion player from Beyond the Beat. ARIDO (the Association of Registered Interior Designers of Ontario) and Totum Life Sciences, a highly

regarded personal training and fitness company based in Toronto, both had displays set up in the gallery to enable guests to experience their condo related services first hand. Guests were entered into a free draw for a number of prizes, ranging from Microsoft's hot new X-Box 360 released only a day earlier, to an autographed Doug Gilmour jersey, generously donated by the former Maple Leafs' captain. Gilmour is now a managing director of Monster Mortgage, a company that specializes in arranging residential mortgages and one of the evening's sponsors.

The vision of MondoCondo is to bridge the gaps in understanding and information that exist between all participants in the condo industry, with an eye to becoming the definitive resource for all things condominium. The TV show will complement a publication and website, [www.mondocondo.com](http://www.mondocondo.com), all geared towards promoting the condominium lifestyle and educating condominium professionals, owners and purchasers. Jim Ritchie of Tridel threw his support behind the MondoCondo concept, noting that both condominium suppliers like Tridel and condominium owners and purchasers would benefit from having access to a resource like MondoCondo.

The response to this year's MondoCondo event by both sponsors and guests was very positive and the feedback organizers have received will be used to expand and improve next year's event.

---

## AVOIDING HUMAN RIGHTS COMPLAINTS



by  
*Patricia M. Conway*  
416.595.8507  
pconway@millerthomson.com

We have raised in earlier issues the importance of developing a privacy policy, and publishing it to unit owners and residents. The policy is a useful tool to protect the corporation against possible complaints. It is also a useful tool in educating the employees and agents of the corporation about the importance of maintaining unit owners' confidentiality.

Another area where policy development can assist the corporation in avoiding potential liability and expense is Human Rights. Many decisions of the Human Rights Tribunals and the courts in Ontario and in other Canadian jurisdictions have ruled that condominium corporations are providers of accommodation and services to residents, and as such are bound by, and must adhere to, the anti-discrimination and "accommodation" provisions of the Human Rights Code.

Further, as an employer, the corporation is bound by the provisions which prohibit discrimination and harassment in the workplace.

These obligations impose a complex set of duties on the Board of Directors and on property management. Board

*continued on page 230*

*Avoiding Human Rights Complaints (continued from page 229)*

members and managers are well advised to attend the advanced seminars offered by CCI, which focus on these issues.

Many potential problems can be avoided by taking the time to consider and adopt, as a policy of the corporation, a policy statement which acknowledges the application of the Human Rights Code to condominiums, and states clearly that the corporation does not tolerate discrimination or harassment. This will, in our experience, be taken into account by the Human Rights Commission, and by the Human Rights Tribunal, in assessing the conduct of the condominium corporation in relation to a particular complaint.

In addition, the exercise of formulating and adopting a policy assists in educating the Board and property management on their respective duties under the Statute.

Developing a policy in this area may take time, but, in accordance with the old adage, this "ounce of prevention" can prevent the trouble and expense of the potential "pounding" you may experience during the "cure".

For more information and assistance in formulating an acceptable policy, please call us.

This newsletter is provided as an information service to our clients and is a summary of current legal issues. These articles are not meant as legal opinions and readers are cautioned not to act on information provided in this newsletter without seeking specific legal advice with respect to their unique circumstances. Miller Thomson LLP uses your contact information to send you information on legal topics that may be of interest to you. It does not share your personal information outside the firm, except with sub-contractors who have agreed to abide by its privacy policy and other rules.

If you would like to receive our newsletter, please email [bdworatscheck@millerthomson.com](mailto:bdworatscheck@millerthomson.com)

## Wishing Our Clients a Prosperous 2006

ONTARIO'S LEADING CONDOMINIUM LAW PRACTICE GROUP

**John A. (Sandy) Kilgour**  
[skilgour@millerthomson.com](mailto:skilgour@millerthomson.com)

**Audrey M. Loeb**  
[aloeb@millerthomson.com](mailto:aloeb@millerthomson.com)

**Denise M. Lash**  
[dlash@millerthomson.com](mailto:dlash@millerthomson.com)

**Warren D. Kleiner**  
[wkleiner@millerthomson.com](mailto:wkleiner@millerthomson.com)

**Patricia M. Conway  
(Litigation)**  
[pconway@millerthomson.com](mailto:pconway@millerthomson.com)

**Anthony D. Scane  
(Construction)**  
[ascane@millerthomson.com](mailto:ascane@millerthomson.com)

**Tina Flinders  
(Law Clerk)**  
[tflinders@millerthomson.com](mailto:tflinders@millerthomson.com)

**MILLER  
THOMSON** LLP

Barristers & Solicitors  
Patent & Trade-Mark Agents

Tel: 416.595.8500

Toll Free: 1.888.762.5559

Fax: 416.595.8695

[www.millerthomson.com](http://www.millerthomson.com)

**We welcome your questions, comments and suggestions. Please contact any of the members of our Practice Group at 416.595.8500**