

# Let's Talk Condo...

Winter 2001  
Pages 151-154

## MILLER THOMSON LLP Condominium Seminar

Just Released:  
The NEW CONDOMINIUM ACT  
will finally be proclaimed into law  
on May 5, 2001

In anticipation of this occasion, the Condominium Practice Group invites you to attend a Seminar on the Condominium Act, 1998 and its Regulations on **April 28, 2001**. Enrolment in the Seminar will include a complimentary copy of *The Condominium Act: A User's Guide*, by Audrey M. Loeb.

We are offering the choice of either a morning or afternoon seminar. Please refer to the enclosed registration form. Enrolment is limited and our last seminar series was completely booked. This early notice is being sent out in advance of the general notice, so please do not delay in submitting your registration form.

## in this issue...

Alteration of an Asset... or of a Service	151
Condo Tips – Budget Increases or mid-year budget Amendments	152
Reserve Funds	153
Case Study: Libel Actions Against Unit Owners	153

## ALTERATION OF AN ASSET... OR A SERVICE



by  
**Audrey M. Loeb**  
416.595.8196

[aloeb@millertbomson.ca](mailto:aloeb@millertbomson.ca)

**W**e recently received an inquiry concerning the power of a board of directors versus the rights of the unit owners with regard to shutting down a whirlpool in a condominium corporation. This type of issue often arises where the costs incurred to maintain a facility or to provide a service are considered to be disproportionately high when compared to the resulting benefit.

Technically, the argument can be made that closing a facility such as a whirlpool or the elimination of a service does not require a vote of unit owners under the current *Condominium Act*. However, it is the author's submission that no condominium corporation should discontinue any service or facility without seeking the approval of owners, as would otherwise be required in matters concerning alterations

to the common elements under section 38 of the *Condominium Act*.

In this regard, the voting majority under the current *Condominium Act* will depend on whether the alteration to the common elements is considered to be substantial or non-substantial. Many declarations or by-laws of condominium corporations include a provision, which authorizes the board of directors to determine whether a change is substantial or not.

The rules will be changing under the *Condominium Act*, 1998.

Any change in services provided by the condominium corporation, and with limited exception any non-substantial alterations to the common elements will require that notice first be given to the unit owners. The unit owners may then determine if they want a meeting to be held so that a deciding vote may be taken.

The cost of the proposed change will apply to the issue of substan-

tiality; there will no longer be a quorum requirement of 80% of the units, the vote in favour of the change will be 66<sup>2</sup>/<sub>3</sub>% of all units and a dissenting unit owner will no longer have the right to have his/her unit bought out by the condominium corporation.

Owners who believe that a decision is oppressive, unfairly prejudicial or unfairly disregards their interests will have the right to apply to the court for an order prohibiting the offending conduct, and if the court can be persuaded that the unit owners have been so affected, the decision of the unit owners and/or the board of directors may be overturned.

## CONDO TIPS

### BUDGET INCREASES OR MID-YEAR BUDGET AMENDMENTS

**T**he *Condominium Act* provides that the board of directors shall manage the affairs of the condominium corporation and that every director and officer shall act honestly and in good faith. This responsibility continues, even where directors are required to make decisions which may be unpopular among unit owners.

Two examples of such circumstances are the recent increases in natural gas prices and the soon to be mandatory requirement for reserve fund studies under the new *Condominium Act*. While mandatory reserve fund studies have been anticipated for some time, many corporations have neglected to address the resulting financial impact upon the corporation.

By contrast, recent extraordinary increases in the cost of natural gas have likely caught most corporations off guard.

Unfortunately, these matters cannot be ignored. Directors must act responsibly by addressing these and/or any other matters which materially impact the underlying assumptions upon which a corporation's operating budget is based and by amending the corporation's budget accordingly where and if necessary.

By addressing these matters promptly, the board members will be able to avoid possible operating or reserve fund deficits.

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

# RESERVE FUNDS



by  
**Denise M. Lash**  
416.595.8513  
dlash@millertthomson.ca

**P**oints to consider on the topic of Reserve Funds under the new *Act* and the Regulations:

- Reserve fund studies will be mandatory:
  - for new corporations created after the new *Act* is proclaimed – a reserve fund study must be done within the first year of registration
  - for existing corporations - a reserve fund study must be conducted within three years of the *Act's* proclamation
- The Regulations provide for three classes of reserve fund studies:
  - Comprehensive study
  - Updated study based on a site inspection
  - Updated study not based on a site inspection
- Further studies must be done every 3 years.
- Until the study is completed - contribute amounts

to the reserve fund in the same manner as under the current *Condominium Act* (i.e. "sufficient funds" - no less than 10%)

- within 120 days of receiving the reserve fund study, the board is to review and propose a plan for funding of the reserve fund
- within 15 days of proposing the plan:
  - the board is to send to the owners, a **notice** containing a summary of the study, a **summary** of the proposed plan and a **statement** where the plan differs from the study (if applicable)
  - the board is to send to the auditor the study, plan and copy of the notice to the owners
- The Board is then to implement the plan after the expiration of 30 days

## CASE STUDY: LIBEL ACTIONS AGAINST UNIT OWNERS



by  
**Richard A. Elia**  
416.595.8515  
relia@millertthomson.ca

Consider the following:

- I. owners vote to determine how to repair the common elements;
- II. a homeowner group wants the matter to be reconsidered and surveys other owners;
- III. a petition is commenced to remove the board members (as they refuse to reconsider the decision);
- IV. a flyer is circulated by the group advising that the survey results are different from the original vote

results. The group gives an oral explanation that owners have likely changed their minds; and

- V. as a result of the flyer, the condominium corporation's lawyer sends a letter to the group advising them that they had defamed (1) the condominium corporation, (2) each director, and (3) each scrutineer, and demands a full apology, an undertaking not to circulate similar materials, and indemnification for legal costs incurred in sending the letter.

While it possible for the reputation of a condominium corporation to be slandered, such instances are rare, and cannot be confused with the legitimate operation of the self-help remedies available to unit owners under the *Condominium Act*.

If the *Act* were drafted in a way to suggest that a director and officer could be indemnified for alleged damages to his/her reputation, involvement of the condominium corporation's solicitor could be justified. However, as the *Act* has no such provision, the condominium corporation's legal counsel should not otherwise be involved by acting on behalf of individual board members or scrutineers under the guise of the matter being related, however remotely, to the affairs of the condominium corporation. Generally, insurance coverage for matters of libel or slander will not be available under directors and officers liability insurance. A condominium corpora-

tion should not fund an action for damages on behalf of a director who feels that he/she has been defamed.

There are obvious political motivations at work in the above fact scenario; however, these cannot be used to justify the use of a condominium corporation's financial resources to fund a director's personal actions. If a unit owner, scrutineer or director feels that he/she has been defamed, that individual is free to bring (and finance) an action against the responsible party; however, that individual would then have to weigh the costs of bringing the action against the alleged damage to his/her reputation.

All of the information in *Let's Talk Condo* is of a general nature for information purposes only, and is not intended to represent a definitive opinion of MILLER THOMSON LLP on any particular matter. Although we make every effort to ensure that the information contained in our newsletter is accurate and up-to-date, the reader should not act upon it without obtaining appropriate professional advice and assistance.

*Let's Talk Condo* is published quarterly by the full service law firm of MILLER THOMSON LLP. By practising within a full service firm, we are able to match the diverse legal needs of today's condominium corporations with the tremendous depth of legal resources offered by MILLER THOMSON LLP's lawyers in other areas of the law including municipal and planning work, employment, labour and human relations, construction contracts and deficiencies, human rights matters, insurance matters and civil litigation.

To obtain copies of earlier issues, or to have yourself added to our mailing list, please contact Betty Dworatschek at 416.595.2968.  
email: [bdworats@millerthomson.ca](mailto:bdworats@millerthomson.ca)

## Canadian Condominium Institute

Membership in CCI has its benefits for condominium corporations and residents.

- Condominium courses and seminars
- Complimentary subscriptions to magazines
- Resource center for publications
- Access to certified experts and directories

For information on this independent, non-profit organization, contact:

Canadian Condominium Institute, Toronto Chapter  
2175 Sheppard Ave. E., Suite 310  
Toronto, ON M2J 1W8  
Tel. 416.491.6216  
email [ccit@taylorenterprises.com](mailto:ccit@taylorenterprises.com)  
website [www.ccitoronto.org](http://www.ccitoronto.org)

## Members of the Condominium Practice Group

John A. (Sandy) Kilgour  
Tel. 416.595.8501  
email [skilgour@millerthomson.ca](mailto:skilgour@millerthomson.ca)

Patricia M. Conway  
Tel. 416.595.8507  
email [pconway@millerthomson.ca](mailto:pconway@millerthomson.ca)

Leonard A. Gangbar  
Tel. 416.595.8199  
email [lgangbar@millerthomson.ca](mailto:lgangbar@millerthomson.ca)

Audrey M. Loeb  
Tel. 416.595.8196  
email [aloeb@millerthomson.ca](mailto:aloeb@millerthomson.ca)

Denise M. Lash  
Tel. 416.595.8513  
email [dlash@millerthomson.ca](mailto:dlash@millerthomson.ca)

Richard A. Elia  
Tel. 416.595.8515  
email [relia@millerthomson.ca](mailto:relia@millerthomson.ca)