

GARDINER MILLER  
ARNOLD LLP  
390 Bay Street  
Suite 1202  
Toronto, Ontario  
M5H 2Y2

Tel: 416-363-2614  
Fax: 416-363-8451  
www.gmalaw.ca

# Condo Alert!

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## Special points of interest:

- GMA unveils new website!
- First Ever Ontario Condo Blog Coming Soon!
- Mark Arnold on Speaking Tour
- See you at the 2008 ACMO/CCI Condo Conference!

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## Should you Trade-Mark Your Condominium Building's Name?

Gerald T. Miller, B.A., LL.B.

Do realtors use your condominium building's name or logo without your condominium corporation's consent?

GMA is receiving more frequent calls from property managers inquiring as to the Corporation's ownership and right to use the building's name. Invariably, a name given to a building or a particular development is created by the Developer's marketing team and prior to turn over any name or logo is owned by the Declarant.

It is GMA's view that the ownership of the building's name and logo is property that should be requested on turn-over. In the event that a Declarant has trade-marked the name or logo, the Condominium Corporation should request an assignment of that trade-mark. If the Declarant has not trade-marked the name we recommend that the Condominium Corporation instruct its lawyer to file an application for both the building's name and logo, if there is one.

We also recommend that the Condominium Corporation strictly enforce and protect its name and any variation used in domain names, so as to ensure that private business interests do not pass themselves off as being somehow associated with the Condominium Corporation.

For more information on trade-marking your condominium building's name, please contact Gerald T. Miller, who is a trade-marks agent.

## First Ever Ontario Condo Law Blog

Condo life and condo law are evolving daily. Are you staying informed?

GMA is pleased to announce the launch of the Ontario Condo Law Blog!

Our blog, the first of its kind in Canada, is a free service to help Ontario condo boards, managers and owners stay current with the latest news in the world of condo law, plus authoritative insight, commentary and analysis on recent cases, developments and trends.

Delivery of updates by blazing-fast RSS (real simple syndication) will help you get the information you need, when you need it, to help make your condo a better place.

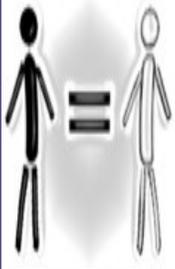
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## New Human Rights Regime Now in Effect

Christopher J. Jaglowitz, B.A., LL.B., ACCI



New Human Rights Complaint System in Effect June 20, 2008

The *Human Rights Code Amendment Act* (Bill 107) came into effect on June 30, 2008; it overhauls the way in which human rights complaints are handled in Ontario.

The new system is designed to speed up and streamline the complaints process. The most notable change is that discrimination complaints are now made to the Human Rights Tribunal of Ontario, which recently has acquired more staff and adjudicators.

Additionally, complainants now have access to free legal advice and assistance from the publicly-funded Human Rights Legal Support Centre.

The old \$10,000 ceiling for damages for mental distress has been abolished. Higher monetary awards are now possible.

We expect that aggrieved condominium residents will make increasingly greater use of the human rights process to deal with their complaints, rather than proceed through the courts. Of greater concern is that the screening process under the old system is gone, and it may be harder to weed out frivolous or vexatious complaints.

Condo boards need to proactively assess their documents, particularly occupancy standards by-laws and rules

related to recreational facilities, as well as physical barriers in and around their premises, to ensure that their services, facilities and by-laws do not discriminate on the basis of religion, race, gender, age, family status or physical disability.

Managers and boards should seek legal advice promptly after discovering circumstances giving rise to a potential human rights complaint, so as to address the situation quickly and to avoid protracted and costly proceedings.

## How Green is Your Condo?

Andrea C. Krywonis, B.Sc. (Hons), LL.B.

Statistics from the City of Toronto show that apartments and condominiums recycle only 13% of waste. This means that 87% of garbage generated in the building usually ends up in a landfill (or on that particular balcony - *you know the one*).

Promoting recycling does not just benefit the environment. Starting July 1, 2008 building owners in the City of Toronto will be required by the City to pay a fee based on how much garbage is set out for collection by building residents. Therefore the greener a condo is, the greener its pocketbook.

The idea behind the fee is to promote recycling, rather than just setting all waste out for garbage collection.

Since there is no cost or fee charged for setting out any volume of recycling, a building's increased effort to recycle will lead to a decrease in the garbage set out for collection and a resulting decrease in the fee the building has to pay. The City has equipped itself with new facilities to separate and process mixed recyclables therefore residents do not need to separate their recyclables.

Toronto's fee is likely an offshoot of the requirement in s. 10 of Regulation 103/94

of the Ontario *Environmental Protection Act*. This Regulation requires the owner of a multi-unit residential building (i.e. one that contains six or more dwelling units) to implement source separation programs for waste. An "owner" includes "a condominium corporation created under the *Condominium Act*" and the section applies only in respect of a building located within a local municipality that has a population of at least 5,000. A "source separation program" is one that; creates on-site facilities for collection, handling and storage of waste; ensures measures for removal of the waste; takes reasonable efforts to ensure that recyclable material is in fact recycled; and provides residents with access to information on the building's recycling program.

The City of Toronto is the first to impose a fee on multi-unit buildings to encourage recycling of waste. However, many municipalities have created handbooks for owners, property managers and superintendants to help administer the recycling regime and raise public awareness. Both the City of Toronto and the Region of Peel have such publications available online at: [www.toronto.ca/garbage/publications.htm](http://www.toronto.ca/garbage/publications.htm) and [www.region.peel.on.ca/pw/waste/garbage/apt-collection.htm](http://www.region.peel.on.ca/pw/waste/garbage/apt-collection.htm), respectively.

The City of Toronto's Recycling Handbook for Owners, Property Managers and Superintendants provides posters

and promotional material, including signs (as seen to the left), which can be posted in the recycling area of the building. These signs come in several languages and even though some display the City of Toronto logo most can be used in any multi-unit residential building in Ontario to get information across.

The City of Toronto has also created a solid waste fee calculator at [www.toronto.ca/garbage/multi/calculator.htm](http://www.toronto.ca/garbage/multi/calculator.htm). This calculator helps to estimate the solid waste management fee for a building based on the actual volume of waste collected each month in a building and the number of units in that building. This tool is "in the works" and until the City has more data the projected waste fees that the calculator produces may be higher than the actual fee charged.

An obvious concern is that private residents will use condo dumpsters for waste disposal, thereby increasing the fee the building has to pay. Some tips to avoid illegal dumping include as follows: storing containers inside the building just prior to 7:00a.m. on collection day; keeping the containers on private and well lit property; posting signs that the container use is for residents of the building only; chaining and locking any containers stored outside between collection days; and calling the City to report illegal dumping (416-338-2010).



# Unmentionables Now Mentionable

J. Robert Gardiner, B.A., LL.B., ACCI, FCCI

Let it all hang out.

Unit owners now have the right to use a clothesline or clothestree despite anything contained in a condominium by-law. The Ministry of Energy's Regulation 97/08 designates clotheslines, clothestrees and installation equipment as prescribed conservation technologies, as contemplated by s. 3 (2) of the *Energy Conservation Leadership Act* ("ECLA")

Subsection 3 (2) of the ECLA permits a person to use designated goods, services and technologies under prescribed circumstances, despite any restriction imposed at law which would otherwise restrict their use, including a restriction contained in a condominium by-law. (Although condominium rules and declaration provisions are not referred to in s. 3 (2) of the ECLA, it appears that the reference only to a condominium by-law is simply an inclusive example which demonstrates the Ministry of Energy's ignorance of condo criteria, but in effect, it does the job.)

Effective since April 17, 2008, O.R. 97/08 prescribes several circumstances where a person is permitted to install a clothesline/clothestree and any equipment necessary for their proper installation and operation. People can only install such a clothesline/clothestree on property used solely for occupancy as the person's place of residence. That would apply to a high-rise residential condo, even where the ground floor commercial businesses are owned by the condominium corporation, but it would not apply to a condo zoned for medical, commercial or industrial purposes.

Clothesline equipment must be installed:

(a) so as to ensure there are no impediments to safety or blocking of access to, or egress from the residence;

(b) in an area where the person has the exclusive right of use by virtue of the person's residency (whether as an owner, tenant or occupant);

(c) adjacent to the side or rear wall of the house or building, so as to be usable by a person who is either:

(i) standing directly on the ground;

(ii) standing on a deck or other fixed platform accessed directly from the ground floor of the house or building (but the deck must be no higher than the floor level of the ground floor); or

(iii) standing on a step-stool or similar device placed either directly on the ground or on a deck or other fixed platform accessed directly from the ground floor of the house or building, if the deck or fixed platform is no higher than the floor level of the ground floor.

In effect, clotheslines/clothestrees are permitted on the resident's side or rear exclusive use areas at ground floor level of a high-rise residential or townhouse residential condo, but only where they will not block access or cause impediments to safety.

Clotheslines/laundry trees cannot be installed on balconies or decks accessible from a level higher than the ground floor level. For instance, a third floor resident could not install a clothestree at ground level, but a Suite 101 superintendent could do so. Clotheslines are not mandatory devices; owners/occupants cannot be forced to install them. The corporation cannot prevent an owner/occupant from installing a qualifying clothesline.

On the one hand, s. 3 (2) of the ECLA provides that any restriction imposed at law that would otherwise prevent or restrict installation of a clothesline shall not apply; on the other hand, s. 3 (3) of the ECLA specifically provides that s. 3 (2) does not apply "with respect to a restriction imposed by an Act or Regulation". In our view, while a condominium declaration, by-law or rule provision cannot restrict installation or use of a clothesline/clothestree, ss. 97 and 98 of the *Condominium Act, 1998* (the "Act") continue to apply to the installation of a clothesline/clothestree. It seems unlikely that the board of directors or owners would pass a resolution to permit installation of an appropriate clotheslines/clothestrees upon exclusive use common elements, since s. 97 (7) provides that the cost of such an alteration must form part of the common expenses. Instead, since clotheslines/clothestrees can only be installed upon exclusive use common elements, s. 98 (1) (a) and (b) and (2) of the Act would be applicable. An owner is entitled to make an addition or alteration to the common elements which is not contrary to the Act or declaration if the board passes a resolution approving the proposed addition or alteration, subject to the corporation and the owner entering into an Owner's Alteration Agreement that allocates the cost of the proposed alteration and sets out the respective duties and responsibilities of the parties.

Typically, Owner's Alteration Agreements require all costs to be paid by the unit owner and such agreements usually contain 25 – 30 pro-



visions on 7 – 9 pages governing a surprising range of issues. The board has the right to set specifications for a clothesline/clothestree and locations of installation (subject to the specific clothesline/clothestree requirements of O.R. 97/08). In view of the fact that exclusive use common elements are involved, s. 98 (2) of the Act requires the board to be satisfied on the evidence that the proposed addition, alteration or improvement will not have an adverse effect on units owned by other owners; will not detract from the appearance of buildings on the property; and will not give rise to any expense to the corporation. No notice need be given to other unit owners since exclusive use common elements are involved. The installation cannot begin until the board has approved the Owner's Alteration Agreement and the agreement is registered on title to the unit. If an owner fails to comply with the agreement, any costs, interest charges or expenses arising from the owner's failure to comply are treated as common expenses and can be subject to a lien registered against the unit.

If the unit boundary encloses part of the backyard or sideyard, the owner is entitled to install a clothesline/clothestree at ground level or up to the first floor level within the unit boundaries, without having to enter into an Owner's Alteration Agreement. Condo rules or by-laws may prohibit non-resident owners from installing or using a clothesline/clothestree and commercial, industrial, medical and other non-residential condos can prohibit clotheslines/clothestrees. It would be ideal for a condominium to pass a clothesline/clothestree rule which incorporates each of the foregoing restrictions and requirements, while permitting the types of installations allowed by the ECLA. Such a rule may refer to the s. 97 criteria applicable to an Owner's Alteration Agreement, subject to registration requirements and payment of the applicable costs by the unit owner.

This newsletter is provided as an information service to our clients and colleagues. The information contained herein is not meant to replace a legal opinion and readers are cautioned not to act upon the information provided without first seeking legal advice with respect to the unique facts and circumstances of their situation.

Please contact us for further or specific information and we would be pleased to assist you.

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## Firm and Professional News

### Mark Arnold to begin international speaking tour

Our Senior Litigation Partner, Mark Arnold, represents the Village of Bil'in, an occupied territory in Palestine. In this respect, an important international Human Rights case has been filed in Quebec against two Quebec development companies. Mark is about to embark on an extensive Fall speaking tour of Eastern Canada and the United States.

- Toronto - September 25; Montreal - September 26; Ottawa - September 27, at the invitation of the Canadians For Justice and Peace in the Middle East: <http://www.cjpme.ca/>
- Montreal - October 21; Ottawa - October 22; Toronto - October 28, at the invitation of El Haq, a Palestinian Human Rights N.G.O.: <http://www.alhaq.org/>
- October 26 - Keynote speaker at the Annual Meeting of the Winchevsky Centre in Toronto, a humanistic secular Jewish Organization: <http://www.winchevskycentre.org/index.html>
- October 27 - Harvard Law School in Boston, Massachusetts
- October 30 - Osgoode Hall Law School in Toronto, Ontario
- In addition to his work in international Human Rights, Mark is also a speaker at the ACMO/CCI Condo Conference in Markham on November 1. He will be part of an experts' panel on legal issues pertaining to the condominium industry.
- Mark is participating in a two day program in Ottawa on November 7 and 8, sponsored by the Canadian Centre for International Justice. <http://www.cci.ca>. The program will focus on litigating international human rights claims and the problems of sovereign immunity.

**Chris Jaglowitz achieves A.C.C.I. designation—Congratulations, Chris!**

**Gerry Miller, Mark Arnold, Bob Gardiner and Warren Ragoonanan to speak at ACMO/CCI Condo Conference**

*GMA also offers a wide range of services including: Real Estate Law, Business Law, Estates Law, Litigation and Dispute Resolution. You can learn more about these services and even fill out instruction forms online by visiting us at [www.gmalaw.ca](http://www.gmalaw.ca).*



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