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Condo Alert!

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Proposed Condo Authority a valuable resource

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

One of the largest features in Bill 106 is the proposed Condominium Authority, the cost of which will be paid for largely through a levy collected through the common expenses on every condo unit in Ontario. Unit owners across the province may well ask whether they will get a good bang for their buck.

I recently made submissions on that point to the Standing Committee on Finance and Economic Affairs, who, as part of their deliberations on Bill 106, were interested to know if unit owners would receive good value for their money. This is a summary of those submissions.

Here are three lesser-known but important ways in which the Condominium Authority will deliver value:

First: As a neutral source of accessible and reliable information to purchasers, unit owners and directors, many disputes can be avoided and others may be resolved more quickly and easily. Because missing or incorrect information is a top cause of condo disputes, the value of good and timely information is obvious.

Second: Creating and maintaining the condominium registry brings a vital tool for understanding what's happening in condo land and lays the foundation for gathering statistical information needed to reform the law over time as things change.

Third: Being focussed on condo issues, the Condo Authority will be uniquely positioned to monitor trends in practice, in technology, in the law and how we live and can then serve the condominium public by promoting awareness of critical issues and best practices through its information delivery infrastructure. And through its obligation to report to government and advise the Ministry, the Authority can recommend enactment or revision of regulations to fill gaps in the legal framework as and when required. In this way, the law can develop to meet the needs of condominium owners over time without the need to come back to Queen's Park to amend the statute.

A fourth and perhaps the largest and most obvious way in which the Condo Authority will be of value is the creation of the proposed tribunal, which is intended to decide the most common condo disputes in a quick, inexpensive way.

To illustrate, consider this scenario that sometimes arises today, under the existing Condo Act:

Let's say:

- 15% of the unit owners at a condo sign and submit a requisition for a meeting, perhaps to remove the board.
- The board rejects the requisition for no specific reason and refuses to call a meeting.
- The Owners give notice calling their own meeting under s.46, in response to which the board runs to court seeking an injunction to restrain this meeting.
- Win or lose, let's say the legal cost of that injunction is $20,000 and must be paid for by the condo corporation.

As a common expense, that $20K legal cost (which is no longer available to pay for utilities or needed repairs) is spread among the owners of the condo corporation. The impact on each unit owner will depend on the size of the condo.

- At a 75 unit condominium, the net impact of that $20K legal bill is $267 per unit ($20K divided by 75);
- At a 150 unit condo, the cost is $134 per unit.
- At a 250 unit condo, it's $80 per unit.

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Editor:
Andrea Lusk

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And that's the cost of just one injunction brought by a condo board to quash the democratic rights of its unit owners. This is often the tip of the iceberg when a bad board uses its position and resources to subjugate unit owners, and the costs are often much greater, as is the frustration and division in that condo community.

This example is for a larger condo, but there are hundreds of condominium corporations in Ontario that contain fewer than 10 units, and it is not unheard of for such condominiums to engage in hugely destructive disputes (more like blood feuds) where the legal costs reach six figures and the owners are each assessed for tens of thousands of dollars.

If the Condominium Authority (with its Tribunal that can summarily decide disputes about meeting requisitions and other important items) can operate on a levy of $1 a month per unit, that's incredible value.

In fact, even at $8 per unit per month (being $96 a year), the cost of the Condo Authority would still be less than most of the scenarios just described. Call it legal expense insurance, call it a hedge against going to court, the levy to finance the Condo Authority is a small price to pay. It is, in my respectful submission, an absolute bargain compared to the catastrophic scenarios that can, and too often do, arise because there is no way in which condo corporations and unit owners can resolve simple but important disputes quickly and cheaply.

For all these reasons, and even if a condominium has never had or never will have a dispute to be adjudicated, members at that condominium will benefit from the proposed Condominium Authority. The mere fact that this body exists will be a strong deterrent against abuse (whether by boards or scofflaw residents) and an effective resource and remedy for those who are unsure of their rights.

The Condo Authority is, simply stated, an idea whose time has come

Know your Deadlines

Alex Young, H.B.A., J.D. and Christopher J. Jaglowitz, B.A., J.D., ACCI

Because condo corporations make and defend legal claims regularly, knowing about limitation periods is vitally important. While condo boards and managers should consult lawyers to calculate the limitation periods, here are some basic principles to keep in mind and some recent examples from the courts.

The *Limitations Act, 2002* ("LA") sets a basic 2-year period within which legal proceedings (i.e., lawsuits) must be issued to pursue a claim. The limitation period usually begins the day on which a claim is discovered. If a legal proceeding is not started within the limitation period, the claim is "statute-barred" and cannot be pursued.

For example, in the case of a slip and fall resulting in an immediate personal injury, the limitation period for the personal injury claim begins to run on the day of the slip and fall, and a lawsuit must be started within 2 years of that day. The limitation period for claims for injuries not apparent on the date of the accident would start running on the date those injuries were discovered or reasonably ought to have been discovered.

Most claims are subject to the basic 2-year limitation period unless otherwise specified in the LA or where a different limitations regime exists. One such example is claims governed by the *Real Property Limitations Act* ("RPLA"), which applies to claims concerning real property, such as mortgages, recovery of land or rent. The RPLA establishes a 10-year limitation period within which such claims must be started.

Several concepts in condo law overlap with real property law and it is entirely possible that some claims brought or defended by condominiums will have a 10-year limitation under the RPLA while others will have a 2-year limitation under the LA. And even when the correct limitation period is selected, it is often unclear as to when it started to run. The following condo-related court cases show that limitation periods can be tricky business.

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In *TSCC 1487 v. Market Lofts Inc.*, 2015 ONSC 1067, the court held that the debt claimed by the plaintiff for unpaid shared expenses under a shared facilities agreement was secured by an automatic lien set out in the shared facilities agreement. By virtue of that automatic lien, the applicable limitation period for this claim was the 10-year limitation under the RPLA. This allowed the plaintiff to recover unpaid shared expenses going back 8 years.

In *Chopra v. Vincent*, 2015 ONSC 3203, the court used some smart legal maneuvering to match up an orphaned condo parking unit with its proper owner after the unit was mistakenly (and unknowingly) excluded from the transfer to the current owner 18 years earlier. This needed to be fixed to allow the current owner to sell the parking unit along with his suite to a new purchaser. Because so much time had passed, the original vendors could not be located and their lawyer's file was destroyed, so no paperwork establishing title was available. After hearing evidence, the court found that the current owner had purchased and paid for the parking unit 18 years earlier, was entitled to be the registered owner at closing and had acted as the owner ever since. The court also found that the owner had taken equitable title to the parking unit on closing and that the vendor held title as a constructive trustee for the benefit of the current owner. The right of a beneficiary to obtain title from a trustee is governed by the RPLA, as opposed to the LA, giving the owner 10 years to commence a legal proceeding to rectify title. The limitation period started running when the owner discovered that he did not have legal title to the unit, which was just before the scheduled closing of his sale to the new purchaser.

In *TCECC 2041 v. TSCC 2051*, 2015 ONSC 4245, the court held that the LA's 2-year limitation period (and not the RPLA's 10-year limitation period) applied to the applicant's claim for unpaid common expenses that were not secured by a condominium lien. If common expense arrears are secured by a lien, the lien may be enforced within 10 years, but a lawsuit to pursue a claim for unsecured arrears must be started within 2 years of failure to pay. The court dismissed the creditor's claim for unsecured common expenses arrears older than 2 years, thereby wiping out almost 3 years of unpaid common expenses that will now need to be collected from the directors or managers who failed to register a lien. As a second issue, the creditor alleged that the debtor acknowledged the debt in an email message. Section 13 of the LA allows a limitation period to be "re-started" if a debtor acknowledges liability for a liquidated debt in writing or by making a payment. The court found that the email in this case was not an "acknowledgement" as it was not signed as required and did not acknowledge a specific amount as owing.

In *Tarko v. MTCC 626*, 2015 ONSC 982, a unit owner started a lawsuit against her condo corporation in small claims court on June 28, 2013 to challenge a special assessment levied by the board on April 12, 2011 (specifying that the first installment was due on July 1, 2011). At the AGM held the following month (May 30, 2011), most of the ownership passed a motion ratifying the decisions of the board for the preceding year. The court found the claim to be statute-barred since the lawsuit was issued more than 2 years after the special assessment was ratified at the AGM and even longer after it was initially levied by the board. This finding survived appeal, where the court rejected the owner's argument that the limitation period began to run from the date the first payment installment was due (July 1) since the owner knew all the details of her claim from the special assessment paperwork and would have sustained the loss even if she had sold her unit before that due date because the assessment was shown on status certificates and would be payable by a new purchaser.

As these cases show, determining the correct limitation period and precisely when it begins to run can be difficult and a miscalculation can result in a costly loss. A condo board or manager that allows a limitation period to expire may be liable to the corporation or other parties for the resulting damages. Do not delay in starting legal proceedings and always get legal advice early.

Gardiner Miller Arnold LLP is pleased to announce that Alex Young has joined the firm as an associate. Alex's areas of practice include condominium, corporate/commercial and real estate law. As a graduate of Osgoode Hall Law School and the Richard Ivey School of Business, Alex brings an exceptional legal and business background to serve GMA's clients.

Alex Young, H.B.A., J.D.

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Session 2A/B – Rapid Legal Fire

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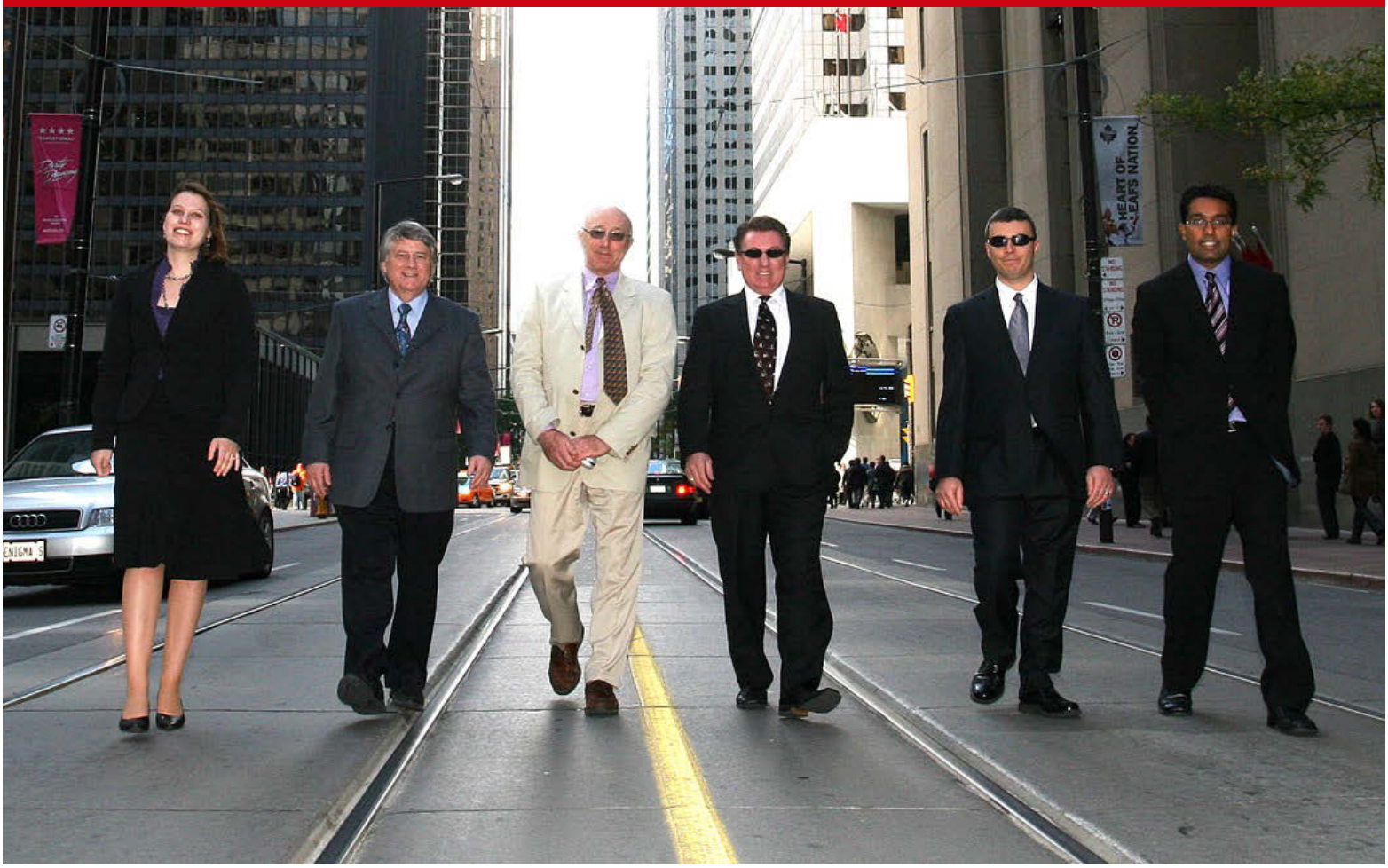
Session 3C –Condo Health and Safety



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