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**Official Report
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Thursday 29 October 2015

**Journal
des débats
(Hansard)**

Jeudi 29 octobre 2015

**Standing Committee on
Finance and Economic Affairs**

Protecting Condominium
Owners Act, 2015

**Comité permanent des finances
et des affaires économiques**

Loi de 2015 sur la protection
des propriétaires
de condominiums

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS**

**COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES**

Thursday 29 October 2015

Jeudi 29 octobre 2015

The committee met at 1400 in room 151.

**PROTECTING CONDOMINIUM
OWNERS ACT, 2015
LOI DE 2015 SUR LA PROTECTION
DES PROPRIÉTAIRES
DE CONDOMINIUMS**

Consideration of the following bill:

Bill 106, An Act to amend the Condominium Act, 1998, to enact the Condominium Management Services Act, 2015 and to amend other Acts with respect to condominiums / Projet de loi 106, Loi modifiant la Loi de 1998 sur les condominiums, édictant la Loi de 2015 sur les services de gestion de condominiums et modifiant d'autres lois en ce qui concerne les condominiums.

The Chair (Ms. Soo Wong): Good afternoon, everyone. We are resuming the public hearing on Bill 106, An Act to amend the Condominium Act, 1998, to enact the Condominium Management Services Act, 2015 and to amend other Acts with respect to condominiums.

Let me just do a couple of quick housekeeping things. For the presenters, you have 10 minutes for your presentation, followed by five minutes for questions by the rotating committee members. The last round of questioning—we ended off last Thursday with the official opposition party, so we'll begin with the third party. Then, for any witnesses coming forward: Any written submissions are due today at 6 p.m.

MR. TOM LePAGE

The Chair (Ms. Soo Wong): The first witness coming forward is Tom LePage. Mr. LePage, can you come up and sit at the front here?

Mr. Jim McDonell: Just a question: Who's questioning?

The Chair (Ms. Soo Wong): This round is Mr. Singh for the third party. You guys were the last ones.

Mr. LePage, welcome. Can you please identify yourself or whatever organization you are representing and your position with the organization for the purposes of Hansard? You may begin any time. I will let you know when you're almost at 10 minutes.

Mr. Tom LePage: I appreciate that. Thank you. My name is Tom LePage, and I'm representing myself.

Good morning, Chair and committee members. My name is Tom LePage. I have been in condominium management since my enrolment in a two-year George Brown property management diploma in 1982. Looking back, I wonder where the profession would be if the industry had continued its support for the two-year program.

In today's terms, I would have been considered an independent portfolio condominium provider-manager for the majority of my career, meaning I was personally managing various condominium corporations and shared facilities through my limited company. Today, I consider myself a condominium consultant, another term for the review to figure out. Thank you for this opportunity.

Condominium ownership: In 1967, our province passed condo legislation that allowed for a new kind of real estate ownership in Ontario—condominiums. This concept was sold to the public, including the government, as affordable home ownership with the benefit of a carefree lifestyle since the maintenance and upkeep were done by others. The concept had not been proven and now, some 45 years later, long-term success of condo ownership remains unknown and continues to be a work in progress.

But what we have learned in 45 years is that condominium ownership is unnecessarily complicated; expensive to own—the most expensive manner in which to own real estate; has unlimited financial liability; behaviorally restrictive; now being used as an investment vehicle with significant leverage opportunities; and oversight by an additional level of government—the board.

In the last few years, I've studied condominium ownership in other legislated areas of North America and the world, and regardless where, condominium ownership is difficult.

I'm pleased to report, with no hesitation whatsoever, that Ontario has the best overall legislation, and soon to be even better, thanks to our province's proactive engagement review process of the current Condominium Act and the incredible work of the provincial officials and consultants.

Why so many issues? The simple answer is that there has been zero enforcement—zip. It has been the Wild West since the first condo was registered. The proposed amendments will create two absolutely necessary self-funded, delegated administrative authorities: the condo authority and the condo manager licensing authority. These two authorities are absolutely necessary if we want

to see condominium ownership maintain a strong presence in the real estate landscape of Ontario.

I'm here to express a few concerns, but my number one concern is the influence of non-condo-owner stakeholders' influence on the entire process. There are multiple stakeholders but only one shareholder, the condo owner.

The proposed Protecting Condominium Owners Act is consumer protection legislation for current and future condominium owners and not for the benefit of non-condo-owner stakeholders; in particular, the boards of the Canadian Condominium Institute Toronto and their sidekick, the Association of Condominium Managers of Ontario. I was disappointed but not surprised that these two organizations' boards hired lobbyists at the expense of their members to push their own self-interest agendas. These two organizations have had a combined 70 years to maintain and enhance condominium ownership in Ontario, and instead, in my opinion, they have become no more than very powerful and self-serving marketing and networking organizations, and the interests of condo ownership are secondary.

I am particularly pleased with the proposed attempt to separate CCI and ACMO with the creation of the condo authority and the condo manager licensing authority. Over the years, CCI and ACMO have become intertwined, which I believe has resulted in unhealthy relationships that are not in the best interests of condo ownership.

There is a great possibility that both of the newly created authorities will have similar personas as Tarion if CCI and ACMO and their self-interest influence continue. This would be a disaster for condominium ownership in Ontario. I ask all committee members to continue to work as hard as possible so this process is 100% for the benefit of future and current condo owners and not for the non-owner stakeholders, regardless of their influence and their paid lobbyists.

Upon reading the transcript of the second reading, it appears that you will have your work cut out for you, as it seems lobbyists have already been somewhat effective. There were two particularly disturbing comments which I read. I apologize if I pronounce these names incorrectly.

(1) Mr. Pettapiece commented that the ACMO education program "is a proven system with a high set of standards for condo managers." Not true. It may be according to the board of ACMO, but just ask any condo board member who has been involved with several RCMs or even ask your own manager in private if they feel the RCM designation is proven. In my opinion, the RCM courses are designed not for quality but for quantity, to fill underpaid managers' positions.

A great example of keeping the bar low is ACMO's first basic proposal for licensing an individual: eight hours of instruction prior to passing an exam; theft of under \$1,000 is acceptable; and five years to complete the existing ACMO courses—and this is to enhance the profession. I believe the eight hours is now 40 hours—the same as a security guard—and conviction for theft under \$1,000 is no longer acceptable.

In comparison, an Ontario real estate licence requires 175 hours prior to receiving a licence. In BC, it takes approximately 250 hours through the Sauder School of Business to obtain a condominium manager's licence.

(2) The next comment is particularly disturbing. Mr. Balkissoon stated that "the bad apples we have out there who are condo managers, the ones who create the fraud and everything else that has been going on that condo owners have been complaining about, are not members of that organization," meaning ACMO. With all due respect, the above statement is simply false and misleading.

During the debate, Mr. McDonell mentioned the most recent publicized alleged fraud in the Hamilton-Burlington area. ACMO's media alert on May 22, 2015, stated: "Neither Brett Leahy nor his company hold membership in the Association of Condominium Managers of Ontario, nor does Mr. Leahy hold the recognized RCM (registered condominium manager) designation."

While it is technically true that Mr. Leahy was not a member on May 22, the alert failed to mention that during 2012, when the alleged frauds were occurring, he was a member of ACMO as a registered condominium manager.

The 2011 high-profile fraud case involving \$20 million—it could be North America's largest condo fraud: That was an owner of an ACMO 2000 certified company.

There are many other examples of improprieties of members of ACMO.

And that's it. I've cut that quickly and I've handed out some other issues that I'd like to bring to your attention, but for later reading.

The Chair (Ms. Soo Wong): Okay. Thank you very much, Mr. LePage. Let me ask Mr. Singh to begin the questioning.

Mr. Jagmeet Singh: Sure. What do you think would be the best way, then, to ensure that we have a better system when it comes to condominium management? From your personal experience, what would you say are some of the strategies that we can implement?

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Mr. Tom LePage: Well, if you go back to 1982, we had a two-year diploma course and it's quite sad that, somehow, that got dropped. I did that two-year course before I stepped in the door of a condominium. Even with that, I felt under-qualified—you know, just more scared than under-qualified.

Education: We have to learn. The two authorities are going to be great; I just don't want to see ACMO continuing to state they're partnering with the government. They said that in their last alert. I hope that's not the case. I think you'd want independent education, just like the realtors.

One of my items was that, rather than this new authority, it would have been a good idea to just have RECO. RECO is a proven authority. An extra 3,000 members on a 50,000-member thing would have been easy, and they're proven. I think they have done a very, very good jobs being regulators.

Mr. Jagmeet Singh: Okay. Anything else with respect to ensuring that there is more accountability for condominium owners, so that they can feel that they have more security or more sense of trust in the system that they're getting involved in?

Mr. Tom LePage: Well, that's a loaded question. I think that's what we're all working on right now, what the government officials are working on, and I think that we're coming a great way. We are very fortunate in Ontario. We're doing well.

Mr. Jagmeet Singh: If you could highlight one specific area—you mentioned, in general, that condominium ownership is complicated and expensive. What is one specific area you think that we can improve in the overall, broad kind of thing that you mentioned, the issues that you have? What's one specific thing you think we could tackle and we'd immediately improve?

Mr. Tom LePage: Transparency.

Mr. Jagmeet Singh: Transparency?

Mr. Tom LePage: Forcing transparency.

Mr. Jagmeet Singh: Okay. And in what regard?

Mr. Tom LePage: Regarding everything about the condominiums.

Mr. Jagmeet Singh: Okay. Top to bottom.

Mr. Tom LePage: Reserve funds: If someone wants to see the full copy of the reserve fund study—in my whole career, I've never asked a board member; we just sent them to them. There was no need. Now, there are situations where things are getting out of hand. I think that's what we have to pull back in.

Mr. Jagmeet Singh: Okay. Any other areas where you think transparency would help a lot? Any other areas that you think we could improve in terms of transparency? This is the reserve fund area.

Mr. Tom LePage: Reserve fund is a huge area. Minutes, everything.

Homeowners are members. For some reason, over the years, we've separated board members and homeowners. A board member is a homeowner. I don't know if it's outside forces, meaning condominium lawyers or property management, but they're separating them: them and us. That doesn't work for a community. It has to be one.

It's a long haul. This concept of lifestyle hasn't been proven yet. If we look at the history of co-ops—lawyers will have a heyday when I say this, but basically, it's the same thing. The only difference is basically financing; in a co-op, you couldn't get a typical mortgage. But other than that, the lifestyle in the co-operative community was the same and it didn't work. Right now, I'm questioning if condominiums' long-term success will work. It should.

Mr. Jagmeet Singh: Okay. How much more time do I have?

The Chair (Ms. Soo Wong): You've got two minutes left.

Mr. Jagmeet Singh: Perfect.

One of the issues that has come up again, and you mentioned it, was the issue around potential fraud when it comes to the use or misuse of the resources that are

available for a condominium. What are some other ways that you think we could prevent some of those abuses from happening?

Mr. Tom LePage: In the handout that I handed out, one particularly disturbing aspect, which I've been trying to solve, is that ACMO engages and organizes what I consider poorly paid property managers, and trades for after-night socials. This is a disaster. There's no good about it. There's nothing that will come out of that, and that bothers me tremendously. ACMO is not doing anything for the perception of conflict.

Mr. Jagmeet Singh: One area that is left out of this bill that many folks have complained about—it's not limited to condominiums; it's new homeowners in general—is Tarion and some of the issues that people have with getting their warranty issues dealt with, getting their payments. It seems that Tarion is creating barriers or obstacles to claims. Have you noticed any of these issues?

Mr. Tom LePage: I come from Collingwood, and my involvement with Tarion is very, very limited—

The Chair (Ms. Soo Wong): Mr. LePage, I'm very sorry to interrupt, but your time is up. Thank you for your presentation and your written submission.

Mr. Tom LePage: Thank you.

MS. ANA MARTINS

The Chair (Ms. Soo Wong): The next witness who is before us is coming through from teleconferencing. I believe we have Ms. Martins on the phone?

Ms. Ana Martins: Yes.

The Chair (Ms. Soo Wong): Good afternoon.

Ms. Ana Martins: Good afternoon.

The Chair (Ms. Soo Wong): Thank you so much for accommodating the committee. I understand that you were able to join us this afternoon by phone, so thank you for accommodating the committee for this morning.

As you've probably heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will be from the government side.

You may begin at any time. Please identify yourself for the purposes of Hansard, okay?

Ms. Ana Martins: Sure. Ana Martins.

The Chair (Ms. Soo Wong): Oh, you know what? The Clerk just reminded me that I need to introduce who is in the room. On the government side, we have Eleanor McMahan, Chris Ballard, Ann Hoggarth, Peter Milczyn and Daiene Vernile; from the official opposition, Toby Barrett and Jim McDonell; and the third party is Jagmeet Singh. We have the Clerk here, Katch Koch.

Anyway, Ms. Martins, you may begin any time.

Ms. Ana Martins: Okay. My name is Ana Martins and I'm representing myself. I want to thank the committee for giving me this opportunity to speak to you.

Two and a half years ago, I was elected to the board of directors in my Mississauga condominium. It is an older building, consisting mainly of owner-residents. The

owners had suspicions that the condo was not being managed as well as it should have been. The superintendent was confrontational but the manager and the board would not deal with him. The vice-president of the management company chaired the AGMs and he was rude and condescending towards the owners. Owners stopped complaining to the manager and stopped going to the AGMs because their concerns were being ignored.

When I went on the board, the other directors made it clear that they resented me being there. I had trouble seeing records. My questions were not answered. Several times, I almost quit. Later I discovered that the property manager, an RCM who worked for an ACOMO 2000-affiliated management company, was giving as many contracts as she could to her boyfriend's contracting company. The other directors knew this but they had hidden this serious conflict of interest from me. What's worse is that much of the work that was done was of poor quality and three years later, some of this expensive work has to be redone.

The management company and the board tried to have a new bylaw package passed by the owners that would have made it easy for a majority on the board to remove any director they did not like. It would also have made it extremely difficult for the owners to organize in order to run a slate of candidates to challenge the incumbents. I have included parts of that bylaw package at the back of my notes.

At this year's AGM, the majority of the board changed. I am now the president. As the new directors went through the financial records and the written contracts, we were very surprised at how poorly our condo was managed and that we have serious financial difficulties. In response, we have replaced the property management company and some of our major contractors.

We are holding owner information meetings and encouraging the owners to participate in the condo's affairs. We are explaining the budget to them, in detail, and telling them how their money is being spent. We are encouraging them to tell us about the problems they have so we can determine how serious they are and how much it will cost to make the necessary repairs.

All of this may seem very basic to you, but believe me, it isn't. Too many condo property managers and directors want to keep secrets from the owners. As I talk to other directors from other condos, I find that corruption is a big problem, along with entrenched boards, rude managers and a general contempt towards the owners.

This is information that I did not learn at the CCI education course that I took. The truth is that owners cannot understand their AGM packages and the auditors and condo lawyers are far more interested in keeping their contracts than they are in looking after the owners' best interests.

Another concern is that condo residents need to understand that condo ownership is not a carefree lifestyle and that they need to get involved in their condo's affairs and learn everything they need to become

informed owners and therefore better able to elect competent directors to run their corporations.

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I wish I had the answers to all these problems, but I don't. However, I believe that it's important for you to know that special interest groups that claim to be condo experts are as much part of the problem as they could be part of the solution.

Thank you for your time.

The Chair (Ms. Soo Wong): Thank you very much, Ms. Martins. I'm going to turn to the government side. Mr. Ballard, you may begin the questioning.

Mr. Chris Ballard: Thank you very much, Ms. Martins, for coming forward with your presentation. I especially like the written submission you made, because you provide very detailed examples of what your concerns are. I think that's important to us as government goes ahead, in future designing and writing the regulations.

I just wanted to say that the Protecting Condominium Owners Act aims to improve protection for the 1.3 million Ontarians who live in condos. The themes that you raised today, those of clarity and transparency, I think were echoed in some of the 2,200 submissions that were submitted to us when we were working our way through these revisions.

If there was one priority that you think we need to focus on, what would the one single priority be within the proposed legislation?

Ms. Ana Martins: I believe that boards of directors need to have knowledge. This is what I'm finding out. Even when I went on the board as a director, I did not have—I had a little bit of knowledge, but not too much, and thinking that the old directors will guide me and help me along the way. It got to the other end. I was stopped from learning. I was stopped from finding out the records, how to read the records, and everything else. I believe the directors, even though they are owners, need to be trained too and have a little guide to follow. That was my first thing: "Where's the guide for me to follow?" And I was told, "You will learn by the seat of your pants." And I'm saying, "Okay, but I need a little bit of guidance"—"Don't worry. Everything is taken care of."

It wasn't until now, on July 7, that I was re-elected and elected as the president, that now I'm finding all kinds of—everything wrong, from financials to minutes to contractors to even the previous property manager, with the contracts with the boyfriend. Even though I was on the board, I did not know that.

Mr. Chris Ballard: I think one of the things we're looking forward to, and I know a number of the 2,200 people who submitted—there were concerns around governance, and so the proposed legislation speaks to creating those new governance requirements for condo boards and some fundamental education about how boards operate, so that condo board members can better reflect the interests of their owners. Is that heading in the right direction?

Ms. Ana Martins: Yes. We do need the boards of directors to have a little bit of knowledge in order to better direct the owners and not condescend to them, because what they were doing was shutting everybody out. We had to knock on doors in order to have an AGM, because we didn't have proxies or owners.

Mr. Chris Ballard: Yes, that's a story we've heard too many times.

Ms. Ana Martins: And now, since the new board, we have majority, and the learning—we are teaching the owners how to read the financials, how to read the minutes, how the decisions are made. We ran out of chairs.

Mr. Chris Ballard: Right. One of the other key parts of this new proposed legislation is the proposal to require that condominium managers be licensed, so not only that they take a training course somewhere but that they be licensed and then be held more accountable, I suppose.

Ms. Ana Martins: Like the gentleman before me.

Mr. Chris Ballard: What's your sense of that?

Ms. Ana Martins: Yes, they do. They need to be licensed, fully licensed, and it's not just, like the other gentleman said, an eight-hour course, because in eight hours you can't learn everything. And the managers have to have transparency toward the board and toward the owners, and not, when an owner comes, to say, "Well, if you don't like it, then sell and go out."

The Chair (Ms. Soo Wong): Ms. Martins, I'm going to stop you here. Thank you for joining us this afternoon and also for your written submission.

Ms. Ana Martins: Thank you very much.

The Chair (Ms. Soo Wong): Have a good afternoon.

Ms. Ana Martins: You too.

HORLICK LEVITT Di LELLA

The Chair (Ms. Soo Wong): The next witness coming before us is Mr. Brian Horlick, from Horlick Levitt Di Lella LLP Barristers and Solicitors. Mr. Horlick, come down. Welcome.

Mr. Brian Horlick: Thank you very much.

The Chair (Ms. Soo Wong): As you've heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will begin with the official opposition party. You may begin at any time. When you begin, could you please identify yourself and your position with your firm.

Mr. Brian Horlick: My name is Brian Horlick. I am a senior partner at Horlick Levitt Di Lella condominium law firm. I want to thank everybody for having me out today, and I tell you, sitting back there, I am starting to get a complex.

I have just a few things I would like to go through. These are the issues that I'd like to discuss.

Code of ethics: Clause 29(2)(e) of the proposed amendments deals with training as a qualification for directors. This clause, however, is silent with respect to any requirement for board members to be subject to a code of ethics. Condominium management providers and

condominium managers will now be subject to a code of ethics. However, those whom they take instructions from will not be so subject.

The Condominium Management Services Act proposes the drafting of a code of ethics for licensees. Under the Condominium Act, the board of directors is given the power to manage the affairs of the corporation. The corporation's operating bylaw will normally allow for delegation of certain management functions to a licensee.

Recommendation: a requirement for directors to be subject to a minimum code of ethics that should be part of the qualifications required to be a director.

Requisitions for meetings—issue: In the case of a requisition where the board has responded stating that it will not call and hold a meeting of owners, proposed amendment 46(13) allows for the requisitionists to revise the requisition. Owners who sign a requisition do so for a particular purpose, as set out in proposed amendment 46(4).

Our recommendation: Care should be taken with respect to permitted revisions surrounding the purpose of the meeting. Revisions to the requisition that change the purpose of the meeting or are otherwise material should be excluded from the proposed amendment, subsection 46(13).

Now, one of my favourite topics, proxies: Under the existing Condominium Act, subsection 52(1) allows votes to be cast either personally or by proxy. Due to the lack of in-person attendance by owners at meetings, the use of proxies has become necessary. This has led to a number of unfortunate abuses, such as:

- the filling in of the date and time of signature on the proxy by the donee of the proxy so as to invalidate a later proxy submitted by the donor;

- the signing by the donor of the proxy of pre-populated proxies in cases where the donor has not read or understood the nature of the proxy;

- the use of pressure or undue influence to obtain a proxy;

- the submission of proxies where the donor signature has been forged; and

- the submission of large numbers of proxies at meetings just prior to the close of registration.

Our recommendations: Proxies should be submitted by donors directly to the management office. Thought should also be given as to whether proxies should be submitted directly to the management office or to whoever is chairing that meeting.

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Donors should be required to place their signatures next to all areas on the proxy that require a vote.

Proxies should be subject to submission deadlines, as set out in the notice of meeting, which would allow for proper scrutiny by meeting registrars and/or chairpersons.

Further, on proxies, proposed amendment 52(4) requires proxies to be in the prescribed form.

We recommend that, given the proxy is a legal document, the amendments should be set out, and there should be mandatory minimum requirements for content, but a

prescribed form should not be mandatory, similar to the condo act presently, in section 52(6), where it is only prescribed that you “may” have a certain form.

Minimum requirements would allow for flexibility in the drafting of proxies, which is needed due to the various different types of meetings and the differing matters being voted on at those meetings.

Another favourite topic: fines. Proposed amendment number 17 states the corporation shall not levy any penalty, fine or any other amount against an owner, an occupier of a unit etc., if it does not indemnify or compensate the corporation for an actual loss that the corporation has incurred.

We recommend that actual loss should include time spent by salaried employees in rectifying any damage caused by the owner and/or occupier.

For example, if you have a salaried superintendent, and the owner or occupier has caused damage, you should be able to say, “Our superintendent spent three hours of his time cleaning up the issue or the mess created by the occupier. We should, as a condo corporation, be allowed to charge back that amount, even though we, the condo corporation, did not get a bill from the superintendent, because he is a salaried person.”

Next we have the borrowing bylaw. Proposed amendment 56(3) prohibits the borrowing of money by a corporation unless it has passed a bylaw specifically authorizing the borrowing, or unless provided for in the regulations.

Presently, as the law exists today, a corporation may borrow money using a general borrowing bylaw for expenditures set out in its operating budget. Most general bylaws are capped in amounts. Given the difficulty in obtaining over 50% of unit owners to vote in person and/or proxy in favour of bylaws, corporations may be hard struck to borrow even nominal amounts.

Our recommendation: The section as set out in the existing Condominium Act should stay as is.

Finally, telephone conference: Proposed amendment 35(5) allows a meeting of directors to be held by telephone conference if all directors of the corporation consent to the means used for holding the meeting.

Our position is that one or more directors should not have the ability to prohibit attendance by another director at the meeting. In other words, the recommendation is that consent of directors should not be required for attendance at a meeting of directors by telephone conference.

The Chair (Ms. Soo Wong): All right. Are you done, Mr. Horlick?

Mr. Brian Horlick: Thank you.

The Chair (Ms. Soo Wong): Okay. I’m going to turn to the official opposition. Mr. McDonell, are you going to begin?

Mr. Jim McDonell: Thanks for coming out today. What is your experience with condominiums? Are you an owner, or is it just through your legal—

Mr. Brian Horlick: I am a lawyer practising 25 years, specializing in condominium law for the last 15 to 18 years.

Mr. Jim McDonell: Okay. What would your priorities be as far as the asks that you have here? Is there any particular one that you see standing out?

Mr. Brian Horlick: I’m going to say that the two most important things in my list would be a code of ethics for board members and the use of proxies. I say those because we’re looking today at property managers and licensees. We’re saying that they’re going to be subject to a code of ethics. There are going to be hearings. If they breach the code of ethics, they can lose their licence—whether it’s the condominium manager or the principal condominium manager.

But we also need to take a step back and say, “Is that the potential problem that we face in condominiums or is there a greater problem?” I think that you need to look at directors’ behaviour as well. What you have, as in many cases in life, is a certain grouping of bad apples affecting the whole bushel, so it’s the bad apples. Whether they are property managers or management companies or directors, we need to upgrade the playing field.

Mr. Jim McDonell: Can you highlight any examples you have with some of the boards and what you’re talking about?

Mr. Brian Horlick: Well, board members can go their own way. They can totally work without the property manager. They can get different types of contracts in for a specific job. They get all the pricing, and all of a sudden it goes to somebody’s brother, it goes to somebody’s cousin. That, to me, would be a breach of ethics.

You’ve got section 40 of the existing Condominium Act, which talks about disclosure if you have a material interest in a material contract or transaction, but that section usually deals with if you’re going to get money back. But if you’re not going to get money back and you’ve given it to your brother—it’s his company, not yours—or you’ve given it to your son, well, there’s an issue there that should be dealt with in the larger code of ethics, which would be more encompassing than just section 40.

The bottom line is, if there’s a breach in the code of ethics, and there’s any type of financial issues involved—and I’m not saying directly to the board member, but if there’s anything where a contract is not tendered in a fair manner, if the price is not competitive in a fair manner, it is the poor owners who end up paying in the end. You cannot pay for anything more than the market value, unless someone’s paying for it. And who would that be? It has to be the owners. So we want to clean up everything, and I think now is the opportune time to do that.

Mr. Jim McDonell: You talk about proxies. Is there a way of making proxies work? They just seem to be an issue every time they—

Mr. Brian Horlick: I will start off by saying that proxies are a necessary evil. They’re evil, yes, because of all the things I said, and they’re necessary because otherwise you can’t get enough people out to have a quorum. So I feel that by having the proxies delivered directly, either to the management office or the management company or to the chairperson, it takes the proxies out of

the hands of the people knocking on the door, trying to intimidate you to give the proxy, telling you things about the proxy that aren't so so that you don't know what you're signing—all of the intimidation factors.

I can tell you as a lawyer, chairing the meeting that's going to—registration's going from 6:30 to 7; the meeting starts at 7. I will tell you that in a contested meeting, at two minutes to 7, I get 65 proxies come in right there. I've got to review those proxies to make sure that they're valid. It's a very difficult situation. The owners are waiting for the meeting to begin, and I'm sitting there with 65 proxies that I have to review to make sure they're valid. By the way, they're all dated at 6:59, the date of the meeting. So you know why that is.

The Chair (Ms. Soo Wong): Okay, Mr. Horlick. Thank you very much for your presentation and your—

Mr. Brian Horlick: I was just warming up.

I want to thank you for having me.

The Chair (Ms. Soo Wong): Thank you very much. We really appreciate it.

MS. RADHA NAGARAJAH

The Chair (Ms. Soo Wong): The next witness before us is, I believe, Radha Nagarajah. You can introduce yourself. Welcome. Good afternoon. Please have a seat. As you probably heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questions will come from Mr. Singh from the official third party. You may begin any time. Please identify yourself for the purpose of Hansard. Thank you.

1440

Ms. Radha Nagarajah: My name is Radha Nagarajah. I'm here to speak as a condo owner who is concerned about the manner in which the corporation is run by the board of directors and the management company.

I live in a condo in south Brampton, where the average age of homeowners is approximately 75 plus. I am a realtor by profession and, due to my profession, I am exposed to facts and figures that most homeowners are not privy to. I ask questions and speak on behalf of many seniors who are my friends and neighbours.

I have been targeted, harassed, defamed and slapped with lawyers' letters, which the homeowners pay for. The seniors are too afraid to complain and are bullied into submission and are exploited by the president of the board and the management company. In fact, the president of the board suggested that I crawl back to the Third World country I came from. I have an affidavit to substantiate that statement.

A quick synopsis of the building: It is 27 years old, with 137 units. Therefore, everybody knows the other people's business, because it is an extremely small community. I pay a maintenance fee of \$848.12 per month for a 1,237-square-foot condo consisting of a single bedroom, a den and a solarium.

My fees are approximately \$170 to \$190 per month higher in comparison to buildings built at the same time

in the same area but with different managements. Our property value, comparatively, is approximately \$25,000 lower. The reason is that the other buildings are well managed with a stable board of directors who act in the best interests of the stakeholders.

We had four board members resign in the past 18 months and were left with just two members, who did the bidding of the president of the board, with a grand total of three board members leading up to the AGM held on September 15, 2015. The AGM was a farce. Vendors of the management company were invited to attend the AGM, including three individuals from the security company. When we objected, we were advised that they were guests of the board of directors and that they were staying.

Proxies: During the last two AGMs, the president of the board canvassed door to door. She intimidated and lied to the seniors, indicating that they could sign two proxies. Unfortunately, some of them did and, in turn, made the original proxies, which were obtained legally, void. She lied, spread false rumours and defamed candidates who she did not want on the board, of course.

This year, a candidate who had two accounting degrees—who, in our opinion, was the best candidate—was instructed, in writing, not to distribute any literature about his credentials. However, the president went door to door, knocking, and used her access to the contact information of the homeowners to call and email them, requesting their proxies. This unethical behaviour was condoned by the other two members.

Reserve fund: One of the main concerns is the reserve fund and the study which was supposed to have been done after three years, as per the Condominium Act. The last one was done in March 2012. The auditor's report supplied for the AGM in September indicated that the study was not done as per the Condominium Act.

At the meeting, I questioned the owner of the management company, who was also the chair, about compliance to subsection 94(9), and the response was that the study was completed and approved and that we would receive form 15 within two weeks. To date, over five weeks later, we have not received same.

When I questioned about subsection 137(2), the penalty for non-compliance, both the chair and the corporation lawyer scoffed at me, saying that there was a lack of enforcement of the act and there was no accountability and no reporting process. Therefore, we should not be concerned about the depreciation of our properties. To their knowledge, nobody had been fined the \$25,000 to date, as per the provincial law, for non-compliance.

When questioned about Bill 106, the response from the lawyer was that it does not have any bearing, as the passing of the bill was so many years away, similar to the last time, in 2001, where it took three years. I found his response rather flippant. I am afraid that, down the road, we would face a special assessment, due to irresponsible spending, lack of transparency and accountability.

Contracts are awarded without the proper tender process. Please see exhibit A—with respect to the exhibits, I

do have a package that I can give you—for an example re the security contract. The management is not consistent in procedures, and some current contracts are automatically renewed. A board member who resigned in May, after three months on the board, indicated that after witnessing and subsequently investigating the award of a contract, he was advised by his lawyer to resign.

A personal attack on me and the detrimental results: In July of this year, while I was nursing my younger sister, who was in a diabetic coma for 21 days prior to passing away, I was slapped with a vindictive and harassing letter by the newly appointed corporation lawyer, accusing me of actions without any form of proof. I requested them to substantiate the accusations, and I have not received a response to date. The ongoing harassment and defamation has caused me stress and depression, and my doctor has advised me to take a leave of absence from my career for a couple of months and postpone all scheduled exams that I'm working on towards obtaining my broker's licence. This, in turn, will affect me financially as I am single and I support myself.

Attached are two letters I received from two different lawyers and my response, for your perusal, which I will submit if you request—exhibits B, C and D—and two memos referred to in the lawyer's letter—exhibits E and F. I have also attached the letter sent by the security company, again accusing me of various deeds without an ounce of proof, and my response—exhibits G and H. I don't generally receive any responses to my letters to the board and management, hence the reminders.

Attached are also two affidavits and letters from past security personnel, confirming that I was targeted and my privacy invaded—exhibits I and J. My every move was monitored via CCTV and scrutinized by the president and the management company. They said that they followed the instructions as they feared job loss, as they are visible minorities, immigrants and seniors. I encourage people to enhance their lives and continue upgrading themselves, hence my interaction with people. The security personnel were instructed not to interact with me.

Views/facts about the board: The president of the board considers addressing homeowners' issues a favour. She makes it known that when the favour is granted, their support is imperative. The board members who toe the line are gifted with their requests: two newly renovated gyms, which we can ill afford, because a board member uses the gyms on a regular basis; revitalization of an indoor golf range, which was not in use for over seven years due to the very high cost of maintenance and the renovations required. A current board member is an avid golfer, hence the commencement of the project. Again, we can ill afford it. A board member who served as a president prior to the current president was harassed and bullied, and she finally resigned from the board in July of this year. She now experiences symptoms of PTSD.

Summary: The current act is far too loose and lacks accountability. The only viable option currently is to take the parties to court. This would be an expensive affair.

Property managers are currently not regulated, and at this point regulation is vital. I would like to say in capitals: It should be mandatory for all members of the board to attend courses to educate themselves. In addition, we would like to see a supervisory body or an arbitrator appointed who would oversee the conduct of the boards, the management companies, corporation lawyers and accountants. The act says absolutely nothing about corporation lawyers who side with boards and managers who pit against good homeowners and bully us, which, in turn, costs us our mental and physical health. Is this fair in the democratic country that we live in?

Thank you for your time.

The Chair (Ms. Soo Wong): Thank you very much. I'm going to turn to Mr. Singh to begin this round of questioning.

Mr. Jagmeet Singh: Thank you so much for sharing your story. I know it's very difficult to do so, so I want to commend you on your courage to share your experiences. To do so, I think you're not only sharing your own experiences, but you're ensuring that these types of things don't happen to anyone else. I think that's why it takes a lot of courage.

Just to turn your mind to some of the issues: One of the things that's proposed by this bill is the creation of a mechanism to resolve disputes. It's one of the issues that has come up time and time again. You mentioned that going to court is very costly. Does this tribunal that's being sought to be established—would that satisfy your concerns or do you think it's too limited because it doesn't allow enough—it's limited in who can be brought to this type of tribunal. Do you have any thoughts on that?

Ms. Radha Nagarajah: Yes. As long as they're impartial. I think you should also expand the limitations so that even single homeowners do have access. You follow a certain procedure and then you have access to the tribunal as well. I believe that it should be an open forum, basically.

1450

Mr. Jagmeet Singh: Sure. In your experience, if you wanted to bring someone to court, who would you be wanting to bring to court? Who is your grievance or your concern with normally? Is it with the condominium board? Is it with the developer? Who are your issues normally with?

Ms. Radha Nagarajah: In my personal case?

Mr. Jagmeet Singh: Yes.

Ms. Radha Nagarajah: In my condominium, I think it's one individual who rules the roost, basically, number one. Number two is the property managers. They condone everything she says, for obvious reasons.

I mentioned two lawyers. The first lawyer subsequently realized that I was being targeted personally and refused to send the last letter that I received, which was terrible. So they hired a new lawyer. I think the lawyers also have to be accountable.

Mr. Jagmeet Singh: Okay. I meant systemically. The issue is normally with the condominium board itself. I think that's what you're saying.

Ms. Radha Nagarajah: Yes.

Mr. Jagmeet Singh: Okay. As someone who lives in a condominium, what are other things that you would like to see happen to make it so that your interactions with the condominium or the board are more transparent, or just to make it better? What would you suggest in terms of us implementing right now in this bill? What would be some additions that you'd like to see happen?

Ms. Radha Nagarajah: That they basically adhere to—some of the clauses in the old Condominium Act are there—

Mr. Jagmeet Singh: But the enforcement isn't there.

Ms. Radha Nagarajah: —except that it's not being followed, period. So if the arbitrator can ensure—if a board can—

Mr. Jagmeet Singh: The compliance—so if there is a decision made—

Ms. Radha Nagarajah: Yes, ensure that compliance is there. Then I think we should be able to circumvent.

Mr. Jagmeet Singh: Okay. So one would be that there is existing protection but it's not being enforced.

Ms. Radha Nagarajah: Correct.

Mr. Jagmeet Singh: So, to make those existing laws or protections meaningful, they need to be enforced. That's one?

Ms. Radha Nagarajah: Correct, because right now, with respect to accountability and transparency, there's nothing, and there is nobody that the common man can go to. That is important.

Mr. Jagmeet Singh: Okay. In terms of specific accountability or transparency things, what are the things you'd like to see as a condominium owner? What would you like to be able to have access to?

Ms. Radha Nagarajah: The minutes, without having to pay 30 cents a copy for three lines—which is already, as I said, in the Condominium Act; you have to go through an entire process, and then to not give you, like—and also access to contracts, if necessary. If you are able to read a contract, and I think if you request a copy of a contract, or even to view the contract, you should have access to that. Right now, in our place, we don't have access, and they will find a reason not to give it to you, saying that, "Because of your conduct, we have decided not to give it to you." Now that shouldn't be allowed. They have broken the law.

Mr. Jagmeet Singh: It should never happen. Exactly. Okay. Access to the contracts, access to the minutes of the board meetings: Those are things that you'd like to see, and without a cost, because if there's access but it's dependent on a fee, that's going to limit people from being able to access those things.

Ms. Radha Nagarajah: Especially if you're living in a place where there is a high percentage of seniors who are on a limited income. A minimum cost is fine. Now, 30 cents a copy with four lines in it, I think, is ludicrous. You have to pay—everything costs money—if you can pay, but then not exorbitant rates where they say, "You have to pay for the person who's photocopying at the rate of \$30 an hour."

Mr. Jagmeet Singh: Yes. If it was made available online, then there wouldn't be a need to photocopy.

Ms. Radha Nagarajah: Absolutely. That would be just fantastic. The minutes online would be just fantastic.

Mr. Jagmeet Singh: Okay. Any other specific recommendations that you have, as a condominium owner, things that come up where you could see an immediate solution, that if this was included in this bill, we'd be able to improve your life or—

Ms. Radha Nagarajah: If they follow the code of ethics, and if they're honest with respect to the granting of the contracts and are very financially savvy—basically, education of the board members. That's not there right now.

Mr. Jagmeet Singh: Okay. There's a proposal now with this bill that there would be an education framework laid out by the condominium authority. Do you think that would satisfy your concerns, or would you like see something more than that?

Ms. Radha Nagarajah: No, no, absolutely. As long as the board of directors are educated and they know what they're stepping into, as opposed to saying, "Okay, I play golf." One of the board members got in and said, "I can barbecue very well," so he was appointed as a board member. I don't know who he was planning to barbecue, but bottom line, that's what he said and he was appointed. As I said, looking at the high percentage of seniors—they said, "Oh, he can barbecue. Good. We can have"—that was it.

Mr. Jagmeet Singh: Those shouldn't be the criteria.

Ms. Radha Nagarajah: No. In addition to that, the property managers should go through a very comprehensive training program. Right now, I believe that they open a door and say, "Okay, do you want to be a property manager? Come on in. You can walk away with \$80,000-plus." That shouldn't be the case.

I'm a realtor. I study at least eight hours a day for me to go in for an exam—a minimum of eight hours a day. My basic exam is 18 months, and I studied quite a bit to get that degree. I don't think anybody should open the door and say, "Okay, come on in. You want to earn \$80,000? Come in." I don't think that should be the case. They should be educated.

The Chair (Ms. Soo Wong): All right. Thank you very much, Ms. Nagarajah.

Ms. Radha Nagarajah: Thank you so much for having me.

The Chair (Ms. Soo Wong): Thank you very much. Thank you for your written submission as well.

MR. TIM HAGERTY

The Chair (Ms. Soo Wong): The next witness before the committee is Tim Hagerty.

Mr. Hagerty, are you here? Welcome. As you have probably heard, you have 10 minutes for your presentation, followed by five minutes of questioning. In this round, questioning will be coming from the government side. Do you have any handouts for the committee?

Mr. Tim Hagerty: I do. I'm just—

The Chair (Ms. Soo Wong): The Clerk is coming around to pick it up from you. I'm going to let you give it to him.

Mr. Tim Hagerty: There are a few different handouts for you. One is a publication from CMHC. There is an excerpt from—oh, sorry.

The Chair (Ms. Soo Wong): Mr. Hagerty, when you begin, can you please identify yourself and what organization—or if you are just an individual coming before the committee—for the purposes of Hansard?

Mr. Tim Hagerty: I would be happy to.

The Chair (Ms. Soo Wong): Thank you.

Mr. Tim Hagerty: My name is Tim Hagerty. I am a professional engineer practising in Ontario. I live in Ottawa and I'm coming at this from a few different perspectives. One is as a condominium owner; another one is as a professional engineer. Also, with my work, we work very, very closely with architects and with the building code. My brief presentation here is just to ask that in the new act, some of the inter-relating components may be considered. Having reviewed the proposed act, it seems that they may not have been fully considered—and some of the ramifications.

I would like to say, first off, thank you, just because coming from the acts that were in the 1970s, the Condominium Act in the 1980s and what was done in 1998, this step forward is a tremendous benefit to owners. So thank you for that. But in one aspect, again, coming at this from a professional perspective, there is something still that may not be the best approach that has been taken, and that is in consideration of item 86 that you have for the proposal. It's to revise sections 97 and 98 of the Condominium Act, which relate to modifications that would be made.

The reason that I might say that this approach might not be the best is not all-encompassing, but there's one clause in section 98 where it requires the services of an engineer to be provided. This requirement is really, really good in many circumstances where you have, say in Toronto, high-rise buildings that are absolutely massive and it takes somebody with quite a bit of experience to understand the building, its structure—you don't want somebody in there just making a change. However, there are many condominiums that don't fit that high-rise structure, and there are many other options available to owners that aren't in a condominium. Also, there is, you might say, an apparent conflict between the Building Code Act, the Professional Engineers Act and the Architects Act.

I'm just here to kind of present these to you. You will obviously be able to review that and go through it. The reason that this came to my attention is because of a division in the regional court in 2009. There is a provision in the Building Code Act that mandated that engineers and architects have certain roles. This was challenged and it was found that the provisions in the Building Code Act did not actually match the Professional Engineers Act or

the Architects Act. It was overruled because the other acts took precedence in that situation.

In a similar way, it might be that the Condominium Act, though it has great intentions and is doing a wonderful benefit to owners, might not have been constructed in a way that is congruent with the other acts. So what I've done for you is that I've printed out copies of the Professional Engineers Act and the Architects Act. In the Architects Act, it's section 11 where it has a list of building types where an architect is required to provide services. Similarly, in the Professional Engineers Act, I've copied section 12 for you, where the requirements for professional engineers are brought forward. Within both of those sections, there are exceptions to when services are required and there is also a structure for rules between the collaboration of engineers and architects and who takes on what role in what type of building.

1500

I'll not bore you with going into all the details of that; we only have a short amount of time. I'll leave that for your review. But what this would mean, in some situations in buildings, is that there may be an over-requirement for engineers, where the tasks should actually be given, preferentially, to an architect, or in other building structures, where it's a requirement that both work together. In the act, I only see the word "engineer," and it seems like this could be streamlined a little to balance this out.

In addition to that, in some buildings, this may have the effect of creating an over-requirement where, in a row house condominium, the Architects Act and the Professional Engineers Act and the Building Code Act exempt the structures from being reviewed by either a professional engineer or an architect. The building code allows for other designers who can take on these design roles in certain circumstances. Generally, it has to do with the building height and the building area.

As we review and as we look at the many various types of condominiums, I think it's a healthy thing to look at what would be legislated and make sure that it matches what is permissible by other acts and, also, that it's done in the best interests of the owners. Because, at the end of the day, when they create a section 98 agreement, if they're trying to do a modification of their house, it's the unit owner, generally, who would be paying for this. To require the services of a professional may inflate the costs unnecessarily.

I would say the question is: Who is this going to apply to? Is it a big portion? Is it a small portion? Is it something that we should be concerned about on the whole? I did bring the CMHC publication, which talks about condominiums all across the country. There are quite a number of tables.

On the figure on page 4, it says that low-rise condominiums approximate 23% of condominiums across Canada, which is a fairly sizable ratio: 1 in 4. If we then take a more detailed view of what's happening in Ontario—you can see on page 16, I've highlighted some graphs there—you have areas like London, Ontario,

where the low-rise row houses account for 60% of the condominiums. Other regions are well over half. There is also a number in the 20%-to-30% range. This restriction to require an engineer would be imposed on many people that it might not otherwise need to apply to.

When I'm looking at it, too, just as a private citizen, I look to what I might want to do with my house and when I might want to have a section 98 agreement, when would I want to change the building structure or something in the building. I think, for myself and many other people, we're looking at an aging population right now. There are a lot of people who need to make small changes to stay where they are, not massive changes: maybe widening a door; if you had a column or a beam, you might want to move it to the side to widen your hallway and have a wheelchair go through.

In addition, there are many people who live in dated condominiums built in the 1970s and 1980s that are looking at doing renovations right now. The CMHC study has that noted, that about 10% of units across the board are requiring major renovations. Some people, when they redo a kitchen, might want to enlarge the window, which might affect a structural wall or something, requiring a section 98 agreement.

On something where you have a small development, you could easily get a kitchen design service in. They can plan any cupboards, they can match some colours for you and they could do a window on any other house, but not on yours, because you live in a condominium. You have to go and pay an engineer to come in, and it inflates the cost.

Many people, I think, are financially restricted when they're making some of these decisions. The government has stepped in with home renovation tax credits and a number of other things to ease the process. I think that when we have higher costs that go with the core of this, in some ways it goes against what we are trying to do, to allow people to age in place and allow people to do these things.

That's what I had in a nutshell here. I'll turn it over for questions—I know you will have a few—but I really appreciate the time here. Thank you.

The Chair (Ms. Soo Wong): This round is the government side. I'm going to start with Mr. Baker. Mr. Baker?

Mr. Yvan Baker: Thank you very much for your very thoughtful feedback and ideas. I know that one of the things in the context of changes is that if the bill is passed, there will be an opportunity through the development of regulations for folks like yourself and others to provide input in the development of those regulations. That allows us to be a little bit more flexible and adaptive to developments in the condo market, and to work on some of the emerging issues that you talked about. That's the one thing I'd like to highlight. I really appreciate the input and the thoughtfulness of what you have had to say.

I understand also that you wrote to the Ministry of Government and Consumer Services about an apparent conflict in section 98 of the condo act, and the require-

ment for a professional engineer adding an unreasonable encumbrance. I know you spoke to that as well. I know that the ministry is open to addressing this concern—or I understand that, anyway. Are there any other elements of the existing condo act that you haven't spoken to, that you think may cause inefficiencies for owners, management or condo boards?

Mr. Tim Hagerty: In general, other than that, I do think that there are a number of circumstances that—again, falling short of taking somebody to court, like a previous person was saying—make it very difficult to negotiate. I have come across situations where property managers and boards have kind of been linked together, almost in, unfortunately, an Elliot Lake-type scenario, where they're doing their thing and they're not really allowing other input. To me that's a little bit on the scary side of things.

I've also been familiar with some boards that have said, "Oh, we've got work done. It was done by an engineer," and I've pressed and I've said, "Okay, who's the engineer? What's the contact information? These are records that we should have access to." The board has stepped back and said, "Well, I'm not providing that," and then I've had a board member confide in me that the work was indeed not done by an engineer. Now, that is quite alarming to me as a professional, and as an engineer who takes public safety as paramount. That's what it is. It's the top of the top.

Disclose this to PEO, and their question is, "Well, who said what?" If it was the service provider saying that they're an engineer and they're not, that's one thing; they can go after that. But when it's somebody who is not providing services claiming to be an engineer, there's really nothing you can do. So it almost says that somebody misrepresent about something and it might be difficult to trace that through.

Now, I know there's the enforcement body that would be looking at some of these things, but one thing that I would prefer to see, as well, is that there would be automatic disqualification, if somebody is representing someone as a professional and they're not. It would be very dangerous if that was a doctor or something else, but why not if it's an engineer?

So things can happen. The safety can be compromised, and it just seems that if a board or property manager was caught not telling the truth that there should be some streamlined way to take action on that. Whether that's through a tribunal or the enforcement agency, it's something. But if there were categories of automatic penalties, similar to how there's a proposal for if there are certain records that are not provided—I understand that the regulations would be modified, so if it was this thing not being provided, there's this penalty and if it's another thing, it's a different penalty—so if there is some type of structure for that.

1510

The Chair (Ms. Soo Wong): One minute.

Mr. Yvan Baker: Do you have any other feedback to offer? You're a condo owner—

Mr. Tim Hagerty: Yes, I am.

Mr. Yvan Baker: As a condominium owner—and you're obviously engaged in issues of governance and what's happening at your condo board—do you have any other thoughts on or any feedback to offer on your relationship with your condo board and your ability to participate in conversations and the issues that matter to your investment?

Mr. Tim Hagerty: I think there's a general lack of participation. I've read the comments and the overview, and I've recommended about 10 of the recommendations that were put together, after public consultation to my board, personally, saying, "Let's look at this. Let's be proactive on these items." So I think what has already been stated is very good.

There are modifications, you might say, that would be proposed that improve the area where a similar material is available but it's not chosen; there's an alternate type that's much more costly. That happens a lot, despite people's refusal. I've had situations where items in the condominium have been shut down without acknowledgement—items that are required by the building code and the public health act to stay active, such as the closure of change rooms and washrooms for pools.

You can discuss things, but at the end of the day, you can't make a condominium board member or a property manager create a work order to address these things that ought to be done.

The Chair (Ms. Soo Wong): Mr. Hagerty, thank you for your presentation, and thank you for your written submission to us.

Mr. Tim Hagerty: Thank you for the time. I appreciate it.

CANADIAN CONDOMINIUM INSTITUTE

The Chair (Ms. Soo Wong): The next group coming before us is the Canadian Condominium Institute. We have Mario Deo and Sally Thompson.

Welcome. Do you have any written submission you want to—

Mr. Mario Deo: Yes. We've already provided a brief to you. It looks like this. I have two extra copies if—

The Chair (Ms. Soo Wong): No, if we already have it, I just want to remind the committee members.

As you heard earlier, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questions will be from the official opposition party. You may begin any time. Please identify yourself and your position with the institute for the purposes of Hansard.

Mr. Mario Deo: Thank you very much for having us here. My name is Mario Deo. We're here representing the Canadian Condominium Institute. I'm the president of CCI, and Sally is the first vice-president.

CCI was introduced to you a bit last week when you heard from Dean McCabe and Catherine Murdock from ACMO, who were on a joint committee to provide feedback to you.

CCI's role is primarily to educate directors and to improve condominium living for owners. Currently, CCI has 2,200 condominium corporation members in Ontario, representing about a quarter of a million residents.

Now a little bit more about each of us: I'm a lawyer exclusively representing the interests of condo corporations and their owners, and Sally is an engineer active in the condominium industry for 25 years. Sally sat on an expert panel that co-chaired the finances working group, and also worked in the ministry for a five-month term, with Frank Denton and Matt Hellin, on the condo act. Both of us are involved with Tarion as consumer advocates, trying to improve the Tarion warranty system on behalf of owners and consumers. I sit on the Tarion consumer advisory council, and Sally sits on the condo task force for Tarion.

We're going to raise three or four issues for your consideration. The first issue is in our brief, which is item number 3, page 3, and it relates to the insurance deductible. First of all, we commend the revision that extends the responsibility of unit owners for damage not only to their own unit, which is the legislation now—the present legislation does not extend the responsibility of damage to other units and common elements; the revision does, and we commend you for that. However, we don't think it's favourable that the present provision embodies the rule in the declaration of a condominium. A declaration of a condominium can only be changed by 80% of the owners, which is highly unlikely to happen.

We think that condominium corporations should retain the right to pass a bylaw which passes the strict liability of damage on to a unit owner. This is like an insurance policy for a homeowner. If a homeowner's pipe bursts, then that homeowner's insurance pays for the damage. The strict liability bylaw in a condominium corporation does the same thing, so it's not unfair at all. This has the benefit of taking advantage of the individual owner's ability to purchase insurance to cover the corporation's deductible in case of damage to the unit. Without this, many deductible claims would fall into the common element charges, which cannot be recouped under the insurance that exists for condominium corporations.

Why is this? It's because condominium corporation insurance has deductibles of approximately \$2,500 for fire damage and an average of \$8,000 and up for floods, which is coverable by their standard policy. Some are much higher. What happens is, a condominium has five or 10 floods a year—could have. That's not unusual. That's a \$40,000 to \$80,000 gap in coverage. The ability to pass a bylaw for an insurance deductible reduces that gap because it passes on the liability to the unit owner, but the unit owner has insurance with a \$500 deductible. We think that should be permitted to condominium corporations because it benefits all unit owners.

One last thing about this: The owners of most corporations have already passed this bylaw, so they are in favour of it. A bylaw, I remind you, takes 50% of the owners to pass.

Now Sally's going to talk about—

Ms. Sally Thompson: I was going to say, I wanted to talk a little bit about the builder's accountability for a first-year budget deficit. Again, there are some very positive changes in Bill 106, where we've minimized the risk of a developer selling or leasing back portions of the condo to the unit owners, which has the net effect of increasing their contribution after the first year. There's also some acceptance that the first-year reserve contribution is too low and that that will be going up. So those are both positive changes to reducing the risk of there being a large deficit on the first-year budget.

But it's important to recognize that when the first-year budget understates the actual costs, when those costs go up, the unit owners have to pay those additional costs every year, not just once, whereas the accountability on the builder's behalf to pay for that deficit is only a one-times multiple. When the maintenance fees are lower, people can borrow more so they pay more for a unit. So the builder has a lot of upside to a lower maintenance fee and not much downside, versus the owners have a very large downside to an understated first-year maintenance fee and a very low upside when the builder's only responsible for one times the deficit.

We were suggesting that you might consider a sort of penalty element to that first-year deficit responsibility, where they might be required to pay a multiple of the shortfall rather than one times.

The other issue we see on first-year accountability is that the lawyers and property managers in the industry tell me that often as much as 50% of the time when the corporation proceeds to try and recover that first-year budget deficit, the company that remains that built the corporation is just a shell company and has no assets. So most of the time they're not recovering the money because the cost to go to court is going to be more than what they would recover.

We were suggesting that there might be some mechanism added to the legislation to permit a security to be held, a letter of credit or an amount of money in escrow to cover that first-year budget deficit risk—maybe 10% or 20% of the operating budget—that then would pay the corporation for that deficit and then release the rest back to the builder.

Mr. Mario Deo: Thank you, Sally. The next item is the proxy form, which is number 8 at page 10 of our brief. This is a very simple issue. The proposed form is a strict form, so it can't be changed, and we agree with that in terms of the voting procedures under the form. The voting procedures require the unit owner to sign the form. That prevents fraud, and that's great. However, the form needs to be amendable to accommodate unique circumstances, like votes by unit owners to change or close the pool, to pass rules and to take votes on things like that. There's a plethora of things that unit owners may have to vote on.

The last one is the recovery of costs at the proposed tribunal. This is section 134. The costs of obtaining an order are recoverable and costs relating to successfully defending a claim are not recoverable. I think there's no

reason—if you're unjustifiably sued in the tribunal and you win, you should collect all the costs, just the same as if you win, you collect all the costs. So again, the section says that if you win, you get all your costs, and if you lose, you don't—and you should.

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The last thing is, sections 134(5) and 134(6): What they both say is, if the condo wins, the condo gets all of its costs, and if the unit owner wins, the unit owner gets all of his or her costs—that's the new section, the latter one. The sections are similar, but they're strangely different; I'll put it that way. All I'm saying is, you should look at those sections, and I think they should say exactly the same words, and they don't. Those are our submissions.

The Chair (Ms. Soo Wong): Thank you very much. Mr. McDonell, you're going to begin the questioning.

Mr. Jim McDonell: Thank you for coming. Now your brief that you sent, is it just recently? We don't have it here—

Ms. Sally Thompson: It was submitted last week, when—

Mr. Mario Deo: October 22 it was submitted.

Ms. Sally Thompson: —the ACMO folks came in.

Mr. Mario Deo: As I say, I have two extra copies if you want them.

The Chair (Ms. Soo Wong): It was submitted last week. It was on our pile.

Mr. Jim McDonell: So you talked about the two sections that are different, and they are what again?

Mr. Mario Deo: Sections 134(5) and 134(6).

Mr. Jim McDonell: So what would your priorities be in amendments to this bill—the way it's presented.

Ms. Sally Thompson: The committee between ACMO and CCI met, and put forward this whole group of suggestions. We've tried to make sure that we've only put items in there that we think are pertinent and important. So those would certainly be our recommended suggestions.

Mr. Mario Deo: Those are our priorities, and section 105 is a priority—the section on deductibles. The budget efficiency is a prayer. The big item there is that condominium corporations go to a builder who's bankrupt and they're basically laughed at: "Sue me." It's unjust, because the builder has already got his benefit from making common expenses low, from lowballing the budget—I hate to use that word—but that's what happens a lot of the time; not all of the time.

Mr. Jim McDonell: So how often do you see that issue? And what's the shortfall?

Mr. Mario Deo: The shortfall is, in really bad cases, 30% of the budget. So if a condominium corporation has a \$1.5-million budget, that would be \$450,000 in a really bad case. The usual case, I would say, Sally—15%?

Ms. Sally Thompson: I don't see it. I can't speak to that.

Mr. Mario Deo: She's an engineer. I usually see these things. But I would say in the usual case, when there's a deficit, it's around 10% to 15%. Many times there's not a

deficit. Not all builders are doing this. But when they do it, it's really unfortunate, because they've gained the benefit of the lower rates, lower common expense charges, because the unit sold for more. But they don't have to provide the detriment.

Mr. Jim McDonell: Now typically that would have to go to court and, of course, that's—

Ms. Sally Thompson: It costs more than what you're trying to recover, typically.

Mr. Mario Deo: If I'm advising a condominium and they have a \$70,000 deficit, I say to them, "Look, first of all, you might not get it because there are no assets by the builder; and, secondly, it's going to cost you about \$60,000 or \$50,000 or \$25,000 to get it." And the result is uncertain, so they end up not going.

Mr. Jim McDonell: Now the issue with Tarion: When it comes to condos, do you have any comments on the Tarion warranties and how they work?

Mr. Mario Deo: First of all, we're both avid consumer advocates, for the consumer. We're at Tarion doing that. But we came today to comment on the proposed act.

There are a lot of recommendations that we both make to Tarion. CCI just produced a 17-page set of recommendations to the Tarion advisory council, which I chair. If you'd like, I can provide you with a copy of that.

There are a lot of issues that are with Tarion, but the one issue that I think is being addressed by this legislation, which is commendable, is that the Ontario New Home Warranties Plan Act is going to be amended to cover retrofit condos, and I think that's fantastic.

Mr. Jim McDonell: That's it.

The Chair (Ms. Soo Wong): Thank you very much for your presentation and your written submission. Thank you.

MR. RANDY LIPPERT

The Chair (Ms. Soo Wong): The last witness is coming to us on the phone. I believe he's on the line. Good afternoon. Is this Randy Lippert?

Mr. Randy Lippert: Yes, it is.

The Chair (Ms. Soo Wong): Good afternoon. I'm just going to introduce all the committee members before we begin, so that you have an idea who is sitting in the room besides the Clerk. I'm Soo Wong, the Chair of the committee. On the government side are Yvan Baker, Chris Ballard, Ann Hoggarth, Peter Milczyn and Daiene Vernile. From the official opposition are Toby Barrett and Jim McDonell, and from the third party is Jagmeet Singh.

You have 10 minutes for your presentation, followed by five minutes of questioning. In this round, questioning will be coming from Mr. Singh. You may begin at any time. When you begin, please identify yourself and which organization you're from. Thank you.

Mr. Randy Lippert: Hello. Thanks for giving me some time to speak about Bill 106. My name is Randy Lippert. I'm a professor of criminology and sociology at

the University of Windsor. I research in the areas of governance and social-legal studies.

I've been conducting research on condo governance since 2005, so about 10 years, I guess. This has become much more intensive since 2012, when I received a major grant to study governance in Toronto and New York City.

Just to give you some background: The points that I'm going to be making today are largely based on this research. The research is funded by the Social Sciences and Humanities Research Council of Canada, so it's completely independent. It's not related to industry or any other organization in any way. This research happened to coincide with the condo act review. We've done about 150 confidential interviews with board members and owners from about 30 buildings—and also with property managers and condo professionals—in the GTA. A minority of those are from New York City.

The comments on the bill, again, are based on this research. First of all, this is a good bill, but I think it needs improvement, based on the research. I just want to make six quick points.

One of the common themes that came out of our in-depth interviews was a real lack of education and knowledge among condo board members and owners. You probably already know that. I think that ought to be addressed perhaps better in this bill. I know that there's mandatory training, but one of the questions we had was whether it ought to come from the Canadian Condominium Institute, or CCI, as it's commonly referred to. That institute is made up of, almost exclusively, industry representatives: people from the property management industry, condo law firms and insurance firms. We're wondering whether something could be put in the bill to ensure the training is provided more independently at a community college and whether there could be some oversight of the curriculum, just so that board members have a more critical understanding of the industry, because they're going to be making decisions about contracting and so on.

The second point is, what came out of the research, as well, is that many owners were very disappointed with a single meeting, in some cases, with their board—an AGM. One of the things that they were wishing would happen was that there would be more mandated meetings during the year. Some boards, of course, offered that voluntarily, but, again, that was a concern that came out—and really, the general lack of communication between board members and owners, which I'm confident you've also heard much about. We also suggested that new technologies, such as Skype, could easily make having more mandatory meetings feasible.

Thirdly, reserve fund study problems: Reserve fund problems were the most commonly cited issue among board members and owners. Many felt that the use of the broad language regarding major repairs—again, exactly what constitutes adequate reserve funds continues to be unclear. I don't think that this bill necessarily gives us more detail about that. I think that would alleviate at least

some of the issues from the get-go. We have claims of people spending a lot of reserve funds on aesthetics rather than maintaining building systems. That was, again, an ongoing concern.

Fourth, conflicts of interest: It's not clear that they are adequately addressed in the bill. We had countless stories of conflicts of interest. We know that the existing legislation requires that board members disclose conflicts to other board members, but we wonder if possibly the bill could require those conflicts to be revealed to any owners in the building, particularly prior to elections but also on an ongoing basis, if in fact they were interested.

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Number five: As we know there was an earlier authority that was sort of included in the legislation, in an earlier condo act, but it was never implemented. This is an opportunity to really implement the authority and to get it right for owners and board members. However, the appointment criteria in the bill seems to be pretty vague. I know competency criteria will be established. In general, it seems to open the possibility that we will only have on the authority condo lawyers, representatives of the insurance industry and property management industry representatives. There is a provision that allows I think it's the minister to appoint representatives of the public, consumer groups, government organizations and so on, but it says "may include," rather than "will include." I was just wondering if a change like that could be made just to ensure that there is broader representation.

We also know that of course owners and members of the condo industry are not mutually exclusive categories. The bill doesn't seem to show any recognition of that.

Finally, the funding arrangements for the condo authority and also the tribunal seem a bit inadequate and possibly too narrow. In addition to owners, who presumably will be asked to pay most of the freight for the new condo authority, it does seem that condo professionals and service providers in Ontario who profit from existing condo buildings and the condo boom really, on an ongoing basis, ought to pay some of that freight. We would suggest that they pay at least 50% of that fee.

Secondly, our research has shown that really there is a difference in terms of the contribution to and commitment to condo governance amongst owners. That divide is often between the investors—the absentee owners—and owner-occupiers. We were wondering if there was any possibility that there be a distinction in the fee, which is to say that absentee owners would pay a higher fee than owner-occupiers, because owner-occupiers are maintaining the building simply by living in it, following the rules, and presumably are more likely to go to the annual general meeting and so on.

So those are my points. Thank you.

The Chair (Ms. Soo Wong): Thank you very much. I'm going to turn to Mr. Singh to begin the questions. Mr. Singh?

Mr. Jagmeet Singh: Thank you very much for your deputation. One of the issues that this bill has not touched on and something that a number of individuals have

raised—which is not limited to condominiums but also applies to new homeowners as well—is the issue of Tarion. Is that something that you have an opinion on: with respect to improving the accountability of Tarion? It's something that a lot of condominium owners have raised: that when there are complaints around the building of a unit and there are compliance issues, when they do try to seek a remedy through Tarion, they're unable to get the results that they'd like to see happen and they don't feel that the protection is there. Is that something that you can speak to?

Mr. Randy Lippert: That did come up in a number of the interviews. Tarion was never talked about in a positive fashion with respect to giving resolution for those kinds of issues. For those more in the know, I guess, it's the composition of that board as well that they're hoping is not repeated or used as a model for the condo authority.

Mr. Jagmeet Singh: That's a great point, if I could just touch on that. One of the issues that was raised, and you just talked about it, was the fact that the Tarion board membership is made up of primarily individuals associated with the building of those condominiums, or the building of homes in general—and the issue being that if Tarion seeks to provide a remedy for homeowners but the board is made up of home builders, there seems to be a conflict with respect to that. How do you think that issue might spill into the issues around the condominium authority?

Mr. Randy Lippert: The people making up the condo authority may well be interested actors. I recognize that a certain level of expertise is required, and often, that's most likely to come from the industry itself. One thing I learned, and you know better than I do, is just how complex condo governance is, but certainly there could be allowance for other actors, if you like, to participate in a meaningful way.

There are some very knowledgeable condo board members who aren't involved in the industry but who simply govern their building. They know the act. I see no reason why some of those individuals couldn't be somehow encouraged to become part of the authority or somehow play a role, and not just on the—I think it's the advisory council that's mentioned in the bill—but in a much more meaningful way.

We also know that the board appoints the tribunal. So it's really about getting the board right to begin with and not simply having people from CCI, who, of course, are well-intentioned, but they do represent only the industry and not your average owner-occupier, for example.

Mr. Jagmeet Singh: I think you raise some excellent points.

With respect to the board membership, do you think that there should be a requirement that it be made up of individuals who could be loosely deemed to be more condominium owners or condominium owner-experts?

Mr. Randy Lippert: In short, yes. Those board members and some owners who have had to deal with boards have become very knowledgeable about the way

condo governance works on the ground, as opposed to in the courts or from outside as simply an owner. They live this every day. I do think that there ought to be a stipulation in the new act that would require that, rather than simply leaving it open.

One of the phrases is the minister can appoint “owners or,” and basically the next phrase describes owner-occupiers. I think the “owners or” part of it could easily be deleted and at least owner-occupiers have a greater chance of becoming part of the board in that way as well.

Mr. Jagmeet Singh: Excellent. One other issue: In the law society—as a lawyer, I can refer to that as an area that I’m familiar with—they have a layperson who’s a member, and that provides insight from someone who’s not necessarily an expert but someone who can provide that input that’s not necessarily affiliated with any one association. Do you think something similar might be a good idea to include in this condominium authority?

Mr. Randy Lippert: I think, at a minimum, but there’s no reason to have just the one—I hate to put it in these terms, but “token layperson.” Again, depending on how it’s run, I think it could be feasible to have several ex-board members or laypersons who have some familiarity with condo governance, but not to make it so complicated that it becomes very difficult to keep the board going or to have stability and so on.

Mr. Jagmeet Singh: Thank you so much for your insight; I appreciate it.

The Chair (Ms. Soo Wong): Thank you very much, Professor Lippert. I understand you did not submit anything in writing to the committee. You have until 6 p.m. today if you want to send anything written to the Clerk.

Mr. Randy Lippert: I will do so. I’m just having a graduate student read it over.

The Chair (Ms. Soo Wong): Okay. Thank you very much. Have a good afternoon.

Mr. Randy Lippert: Thanks.

The Chair (Ms. Soo Wong): I just want to go through a couple of things administratively for the committee. Amendments are due Tuesday, November 3, at 12 noon.

I understand from the Clerk that the research staff will be submitting a report to the committee in terms of a notes summary of all of the witnesses before the committee. That’s coming up Monday.

We will begin clause-by-clause this Thursday, November 5, at 9 a.m.

I noticed on the agenda about committee business—I have been advised that the subcommittee wants to go back to the subcommittee report before the committee as a whole to discuss the subcommittee report. You do have a copy. I have been advised by the members of the subcommittee that they would like to do that work after the House returns from constit week, so there will not be any committee business today. I just wanted that on the record. I have been asked by the three subcommittee members—one of them is right now speaking in the chamber. So just out of fairness to the subcommittee members, we will hold that subcommittee report so that all the subcommittee members can have a chance after the committee returns from constit week.

Any other questions or comments before I adjourn the committee for today? Seeing none, I’m going—

Mr. Jagmeet Singh: Just one brief question. So there were two subcommittee reports, what’s been broken down into A and B. They’ll be separated and they’ll both be dealt with in the next—

The Chair (Ms. Soo Wong): They are going to be dealt with at the next subcommittee meeting, but not today at the committee as a whole—

Mr. Jagmeet Singh: Sure. That’s good. Perfect.

The Chair (Ms. Soo Wong): —just out of fairness to all of the subcommittee members who are not here to speak on the item.

All right. Seeing none, I’m going to adjourn the committee today. Thank you.

The committee adjourned at 1542.

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