



Condo Law eBulletin

A NEWSLETTER FOR THE CONDO COMMUNITY

Condo Group

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Government Announces Mandatory Qualifications for Condo Managers

John De Vellis

In a move long-awaited by many in the condo industry, the Ontario government has announced that it that condominium property managers will need to have mandatory minimum qualifications. The move is part of the [Condominium Act Review](#). Shibley Righton's Armand Conant sits on the expert panel that is looking at what mandatory qualifications for condominium managers should be. The move to require mandatory qualifications has received broad across the industry, including from ACMO, CCI and owners' groups. The President of ACMO, for example, said in a release following the announcement that "this will bring added security for the province's 1.3 million condominium owners."

Right now managers are not required to have training even though they are responsible for administering six or seven-figure operating budgets and reserve funds that could be several million dollars, not to mention the many daily challenges, from compliance matters to contracting out of services like cleaning, landscaping and repairs, that managers must deal with.

Are your Condominium Pool Rules *Code* Compliant?

Deborah Howden

Now that the summer months are firmly upon us, we want to remind condominium corporations and management that "adult-only" pools in condominium recreational facilities, subject to exceptional circumstances, run afoul of the provisions of the Ontario *Human Rights Code*. As many are aware, in *Pantoliano v. MTCC 570*, a 2011 decision of the Ontario Human Rights Tribunal, an owner applied to the Tribunal for damages and non-monetary remedies after her condominium corporation established pool rules restricting children's use of the pool. The Tribunal ruled that such rules were invalid for discriminating against the unit owner on the basis of family status. As a result, the Tribunal struck down portions of the rules and awarded the unit owner general damages. Managers and Boards should review their rules and policies to avoid disputes, including potential human rights complaints.

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RECENT DECISIONS:

John De Vellis

Court Calls for "appellate guidance" on issue of condominium costs in compliance matters
York Condominium Corp. No. 345 v. Qi

In the well-known decision of *MTCC No. 1385 v. Skyline Executive Properties Inc.* ("Skyline"), the Ontario Court of appeal set in motion ushered in the current practice where condominium corporations routinely seek from unit owners, under s. 134(5) of the *Condominium Act, 1998*, their total, actual costs incurred in obtaining compliance orders against unit owners. Those costs are often two to three times more than costs awarded by courts. A number of recent cases have sharply cut costs sought by condominium corporations in compliance matters.

The recent decision in *York Condominium Corp. No. 345 v. Qi* goes a step further. In *Qi*, the unit owner defaulted on a single common expense payment in the amount of \$497.51. That single default increased substantially due to the addition of monthly default fees, interest, and legal fees. By the time the condominium corporation brought a summary judgment motion for possession of the unit, the total had grown to \$46,736, including legal fees but not including the costs of the motion.

Section 85(1) of the Act allows condo corporations to recoup their reasonable legal costs incurred in the collection of arrears. Despite the Act, and provisions in YCC No. 345's (and mot condo corporations') declaration that allowed the corporation to recoup all of its legal costs incurred, the the court said that the YCC 345's costs should be assessed on a partial indemnity basis. The court cited a number of cases in which the courts have found the sections of the Act allowing condo corporations to recoup all of their legal fees do not "give counsel licence to spend the client's money with impunity." The court agreed with the owners' counsel that the legal fees charged, totaling \$35,767, were "*immensely disproportionate to the arrears of common expenses claimed by YCC 345...the defendants cannot reasonably have been expected to anticipate that they would be asked to pay legal costs of this magnitude given the amount of their original default.*"

In his concluding remarks, Mr. Justice Quigley also called for "appellate guidance" to address costs related legal issues that have arisen since the Skyline given that "*experience suggests costs issues in such cases will also continue to raise issues of fairness and the standard of conduct to be expected of both condominium corporations and their owners.*"

This a cautionary tale for both unit owners and condo corporations. Unit owners should be very careful in challenging arrears, as minor amounts in dispute can quickly escalate into crippling debts due to interest and legal fees and other costs. Condo corporations, on the other hand, should be aware that, whether sought pursuant to 85(1) (reasonable legal fees incurred in enforcing a lien) or s. 134(5) (costs of obtaining a compliance order), courts are increasingly uncomfortable with cost claims that are vastly disproportionate to the amount in dispute.