

Ontario's Condominium Act Review Submission – First Stage

November 14, 2012

***This review exercise of the Province of Ontario's Condominium Act
is a democratic privilege and it is an
honour to have the opportunity to voice change.***

All comments and opinions within this submission are that of the submitter as of
November 14, 2012 – subject to change.

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Tom LePage Biography

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1.0 THE OPPORTUNITY

I cannot stress enough how fortunate condominium owners are to be given this unique opportunity for change; it will be at least a decade before this opportunity is made available again.

Condominium owners have never taken advantage of the strength and power they could obtain by becoming a united force. If the lack of participation by owners within their individual condominium corporation is any indication, the tremendous benefit of being a united group will likely go untapped.

I have approximated the three points listed below in an effort to provide insight into the magnitude of the condominium owners in Ontario:

- Own **\$147,500,000,000 of real estate**, which is ten (10) times more than our Canadian Pension Plan (CPP) real estate portfolio and almost equal to the total equity of our CPP of \$165,000,000,000.

(590,000 units X \$250,000/unit = \$147,500,000,000)

- Through their condominium corporations condominium owners purchases **\$2,800,000,000 worth of private goods and services annually** from local and provincial businesses.

(590,000 units X \$400 monthly common element fees x 12 months = \$2,832,000,000 annually)

- Condominium owners pay approximately **\$1,800,000,000 in property taxes**.

(590,000 units X \$3,000 annual property taxes = \$1,770,000,000)

These points underscore the strength of this group should condominium owners unite.

2.0 MY INVOLVEMENT IN THE CONDOMINIUM UNIVERSE

After working as a frontline condominium manager since 1984, I am now focusing my expertise on condominium consulting (2011). Over the duration my career to date, I have had direct involvement in over 500 Annual General Meetings, and 2000 Board/Committee meetings. With consideration to my experience and relevant accreditations, I feel I can make valuable contributions to the Province of Ontario's Condominium Act Review.



Please refer to **Appendix 'A'** for a copy of my biography.

It should be noted that I did offer my services to the Ontario Government with respect to the Province of Ontario's Condominium Act Review. I was instructed that consultants were not to be engaged at this time. Given this, I have prepared this submission to outline some of my thoughts with respect to the condominium industry as a whole and items relevant to the Condominium Act.

I am currently creating a parallel draft concept of condominium management principles, which may or may not mimic the future condominium act. This concept is called "Condo-Ology™". The trademark Condo-Ology™ is owned by my firm Thomas William LePage Management Inc.

The Condo-Ology™ draft mission statement is:

"To establish a universal standard for the operations of a condominium corporation with the re-introduction and mandatory use of 'Common Sense'."

3.0 THE REVIEW PROCESS

I would like to express my sincere appreciation to all of those who are participating in the review of the Condominium Act of Ontario. I would like to particularly recognize the ministry's staff and independent professionals in this exercise. I have difficulty in grasping this monumental task - to attempt to obtain agreement of 590,000 condominium owners and numerous stakeholders, all with their own opinions and agendas.

My personal observation of my municipal town council and their attempts to solicit genuine public input has been disappointing. The current consumer approach to public input meeting prior to major decision making seems to be a "token show of democracy" by those we (the public) have elected. In my opinion, at the end the day, the personal agenda of the so-called power brokers on council prevails with little consideration of the public input.

The introduction by our provincial government to introduce the public engagement approach for the Condo Act Review has created a great deal of personal enthusiasm and optimism for the re-vamping of the next Condominium Act.

I think it would be helpful to all involved, especially for those individuals that have been chosen to sit on the Residents' Panel, to read Don Lenihan book 'Rescuing Policy – The



case for public engagement'. The 'Public Engagement Approach' will be paramount in determining whether this review of the act is successful or not.

3.1 Public Engagement without the Public

I accept the fact that the Public Engagement Approach cannot be negotiated with all of the 590,000 condominium owners or the approximate million plus condominium dwellers and I am also beginning to understand the importance of the role of the Residents' Panel. However, I do not understand why government funds are not available for public relations or advertising to ensure all condominium owners are aware that the review process is occurring.

I believe there is still time to aggressively publicize the importance of this ongoing review.

3.2 Greater Transparency and Additional Information

To date, the government has not explained the role the Residents' Panel in sufficient detail. The information available has been general and has lacked the specificity required.

In the first two public sessions about the review process, the government stated that no stakeholders have been chosen to sit along side the panelists in a roundtable setting. In contrast to these statements, a number of associations publicly announced, on their websites, that they had received invitations to be a stakeholder. This contradiction of information is a major concern for me.

As I monitor Ontario's Condominium Act Review, a number of events are a cause of concern. The following events are listed below:

- A few weeks ago, I became aware of an organization that will be partnering with Canada's Public Policy Forum known as MASS LBP. MASS LBP will be responsible for the designing and organizing the Residents' Panel.
- On October 30, 2012, I reviewed an Ontario condominium law blog of Chris Jaglowitz of the law firm Gardiner Miller Arnold LLP which reported that Mr. Jaglowitz had been chosen, along with two others to speak as 'Experts' to the existing Residents' Panel with regard to consumer protection for condominium buyers.
- On November 12, 2012, I received a Bulletin from the Ministry of Consumer Services where the ministry have created an Advisory Group that is made up of



'Experts' to help the Ministry fully understand the issues that are raised during the review and advise on the process. During these meetings the individual members view points are kept confidential.

In my opinion, the contents of these meetings and the processes by which experts are selected should be made public. Beyond the public's right to government transparency, I would think it would be beneficial for the contents of these meetings be available in an effort to educate the public.

I am appreciative of the fact that the ministry did include the names of the members of those appointed to the Advisory Group. I can only hope that the public engagement approach values transparency and information sharing with the public as one of its most important objectives.

3.3 The Resident's Panel

The Resident's panel is a key difference between Public Engagement Approach and the Consumer Approach.

In session one in Toronto, the fact that the 10,000 civic lottery letters were sent randomly to condominium dwellers in order to choose the 36 member Residents' Panel concerned many in attendance for two main reasons:

- 1) The Residents' Panel will include tenants. Personally, I can understand if a tenants' association wished to be involved, they should be considered as a stakeholder; however, tenants representing the condominium owners through the Residents' Panel, was a definite concern.
- 2) The 36 government selected individuals ('the Residents' Panel') is a representation of .000061011694% of the condominium owners in Ontario (one panelists per 16,389 condos) or less than half, if the Residents' Panel is considered to be representing all condominium dwellers.

My concern is that by mailing to only condominium dwellers, the selection process failed to consider non-resident condominium owners. One of the main concerns being raised is from the perspective of the non-resident owner; therefore, I believe their involvement is important for the success of the review. I do believe this concern was raised, but so far the solution has not been communicated.

In the MASSLBP Bulletin, the process of panelist selection was described as:



“The 36 members of the Panel will be randomly selected from across the Ontario. Ten thousand Civic Lottery letters were mailed across the province in September and the response cards we have received clearly show that many Ontarians are keen to participate. Panel members will be selected through a Civic Lottery process, which in this case will balance for age, gender, geography, type of residence and renter/resident/owner status.”

The Bulletin then states:

“The Panel will meet three times this fall and once again next year to learn about this important piece of provincial legislation and agree on priorities for changing it. The Panel will provide advice on issues such as consumer protection for buyers, condo board governance, and dispute resolution mechanisms.”

The statements above are vague, and provide minimal context and specific detail. The public should be made aware of who will be teaching the panelists about the importance of the Condominium Act of Ontario.

4.0 THE BIG PICTURE – WHAT ARE WE DEALING WITH?

In my opinion, the various problematic condominium communities' issues are much more deep rooted than most are acknowledging or realizing. I have read on a few occasions, where “experts” have mentioned that the Condominium Act only needs tweaking. I have also read where a condominium lawyer stated that the current legislation worked so well that one can quite accurately state that the reserve fund problem has disappeared in 99 percent of condominium corporate governance.

My personal observation is that the farther away a stakeholder is from the hands-on operations of a condominium corporation, the less they feel there is a need for change.

Obtaining mortgage financing for a condominium is becoming increasingly difficult and often the second tier mortgage financing is the only option. It is my opinion that the Canada Mortgage and Housing Corporation (CMHC) should be invited to sit as either an expert or stakeholder.

4.1 What is Good Management?

I believe the Residents' Panel and those in charge of the review process must define 'good management' before proceeding.



The problem with this type of review such is that we only hear about the problems.

I hope the panelists will be able to sit down with several successfully run condominium corporations' board of directors, along with a few owners and their front-line condominium managers and hear directly why their operations are successful. These conversations would provide great insight for the Residents' Panelists to learn what the real goals are!

In my opinion, for long-term success, both the board of directors and the condominium manager must have a tremendous amount of respect for each other and mutually work towards the common good of all the owners. I am unaware of any condominium corporation that was deemed a success exclusively through the efforts of the board of directors or the condominium manager in isolation.

Directors are to direct (via board of directors) and managers are to manage. This is a partnership.

4.2 Is a Board of Directors a form of Government?

I believe it is extremely important that the Residents' Panel and those in charge of the review, fully comprehend the scope of the challenges they are dealing with. I have been involved in hundreds of elections and one of the most frequent comments made by a nominated individual is: "Running a condominium corporation is no different than running a business". With all due respect, I wish this was the case.

A condominium corporation is a human settlement within the confines of a municipality, operated under provincial legislation. The directors are elected representatives, not that different than a minister in government. Using this analogy, the condominium manager's role is that of the 'deputy minister'. The condominium manager is the professional civil servant whose responsibility is to run the day-to-day activities, no matter who has been elected to the board of directors. Directors are elected by owners and all are legislated to pay common element fee (equivalent to 'the taxes').

Deputy Ministers (condominium managers) serve at the pleasure of the government (board of directors), and can sometimes lose their positions as a result of a change in the party (directors) in power, particularly if they are seen as too closely identified with the policies of the previous government (board of directors).

For condominium owners, does the board of directors constitute a fourth level of government in Canada?



I believe so, and I believe that those in charge of this review and all parties involved should keep this in mind when discussing various issues.

5.0 DIRECT DEMOCRACY

In Canada, the first three levels of government, for practical reasoning and for this submission, are very close to a Representative Democracy - meaning, the whole body of citizens remain the sovereign power, but political power is exercised indirectly through elected representatives.

Condominium owners cannot afford a fourth level of government similar to the first three.

Condominium corporations are fortunate when compared with other democratic societies as:

- A) They are an extremely small society; and,
- B) They are less diverse.

Condominium owners of a specific condominium corporation share commonalities: location, neighborhood and value. Additionally, it may not be a stretch to assume other similarities (for example: income bracket, life style, etc.). These similarities make compromising and communal involvement a reachable goal.

I suggest that the government of a condominium corporation take the form of a 'Direct Democracy', in which people vote on policy initiatives directly - as opposed to our first three levels of democracy in which people vote for representatives, who then in turn vote on policy initiatives.

With today's technology, having electronic polling/surveying available to the board of directors is a huge benefit for both the owners and more importantly the board of directors.

"Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time." - Sir Winston Churchill (1874 - 1965), Hansard, November 11, 1947.



5.1 Every Individual Condominium Corporation needs Public Engagement

I would also strongly suggest that the review process take full advantage of the expertise of Public Policy Forum led by Don Lenihan and the firm MASSLBP. These companies have assisted countries/provinces with 'Public Engagement'. I believe it should be relatively straightforward for these organizations to create a mini model of Public Engagement to be incorporated into the new Condominium Act.

6.0 THE ISSUES AND POSSIBLE SOLUTIONS

6.1 Provincial Legislation is the Minimum Standard

Government Acts and Regulations, through provincial legislation legally, establish the minimum required standard in the eyes of the government. All condominium corporations have unique situations, and if the minimum is not sufficient, then more must be done. In my opinion, this is a critical Condo-Ology concept.

As an example, I am currently working for three small condominium corporations and we (owners, boards, manager and I) are attempting to amalgamate. I am very fortunate to be working with individuals that quickly concluded that in order to have true transparency, governance and financial accountability within the newly created condominium corporation; we had to go beyond the minimum legislated standard.

There are several initiatives we have undertaken which will be mentioned herein and will be identified as 'Condo-Ology™ Concepts'.

6.2 Governance – Keep it Simple and Understandable

The general concept I wish to convey in this section is that governance should be kept simple and understandable. Additionally, the following discussion addresses absentee owners' impact on governance and the lack of properly prepared directors.

6.2.1 Governance

Governance is the process of decision-making and is the process by which decisions are implemented (or not implemented). Good governance is developed by those being governed and remains consistent and transparent.



My Condo-Ology™ concept has created a new condominium document with the help of owners. This document was given its title by a committee member, and will be known as 'Operation Policies, Practices and Procedures' (PPP). This document was developed by assembling the various activities of the condominium manager, annual requirements of the board of directors and owners into one cohesive document. Change can happen by vote of the owners at any one of their two general meeting of owners.

It is clearly written, very easy to understand, and is customized to the condominium corporation's specific needs. All owners were involved in the drafting of the document. Topic covered within this document include: the handling of late payments, the identification of exact dates (i.e. third Saturday of a particular month) on which owner meetings are to take place, an outline of non-compliance procedures, the number of communications etc.

The bottom line is that the PPP document reduces politics by enhancing transparency and owners' involvement. Furthermore, the corporations' policies, practices and procedures remain consistent as they are not changed when a new board of directors is formed.

6.2.2 Absentee Owners' Impact on Governance

There exists a problem when the participation of owners cannot support an initiative of the board of directors which requires more than a majority of those present at an owners' general meeting. Many of the current legislated vote requirements are worded in a way that identifies a certain percentage (51%, 66.2/3%, 80% or 90%) of the total units in the condominium corporation must vote in favour of a voting item. In such situations, a unit owner who does not vote at all is counted as a no vote.

The requirement for 51% or 66 2/3% is routinely a challenge and can be extremely difficult, but can be overcome by hard work. However, the 80% or 90% requirements are practically impossible to meet.

I have identified the following possible solutions to this problem:

- Make voting mandatory. This was recently done in Australia and turnouts have soared to 91% as a result. This idea was put forward by an attendee in Session One in Toronto.
- Allow owners who knowingly recognize they will not take part in the required voting to opt out of any voting, and be eliminated altogether in the total of the number of units.



6.2.3 Directors Not Well Equipped for Role

The main reason why Directors are not well equipped for their role as a Director is because of the owners who voted for the directors were not knowledgeable with regard to the appropriate requirements for the position (or worse, were not present for the vote) and voted for an individual that was not suitable.

I am a strong believer that every owner can be an efficient director given the right support from fellow owners, directors, condominium manager, reserve fund study author and auditor. Along with the support, every director should be provided with the proper tools. These tools include clear and concise condominium documents including the PPP (as previously described) and standardized operational reports.

There are many problems that can arise when trying to find suitable directors. Unrealistic or undefined expectations may have been created by past board of directors and owners for the new potential directors. The more involvement and direct day to day responsibilities that the director is expected to do, the more daunting the role and less likely to attract more suitable owners to volunteer.

6.3 Transparency

I have identified three main components of transparency:

- 1) It is the board of directors' responsibility to keep the owners apprised of the on-goings of the condominium corporation at all times. There should be no secrets; the more open the board is, the greater likelihood unsettling rumors and mistruths will disappear.
- 2) Allowing all owners to have easy access to all pertinent records of the condominium corporation. It is the full right of an owner to inspect and review whatever relevant documentation they wish; after all it is every owner's personal funds that funds the operations of their condominium corporation.

There are exceptions which are clearly defined in the current Condominium Act. If there is a concern that confidential information obtained by an owner could be used for inappropriate intentions, a simple agreement or waiver could be signed by the owner requesting information.

- 3) The information obtained must be understandable to all owners.



6.4 Reserve Funding and Reserve Fund Management

The following discussion pertains to reserve funding and reserved fund management with a specific focus on: the standardization and the methodology of reserve fund studies, the need for annual updates, and using reserve fund studies for installing energy technologies.

6.4.1 Standard Reserve Fund Studies

In my opinion, it is imperative that all reserve fund studies should be standardized throughout the industry. It is very important that all (owners, board members, condominium managers, realtors and all future prospects etc) can easily understand a reserve fund study. Currently, it is extremely difficult to understand various reserve fund studies, because the format and content vary from report to report. Furthermore, it is my opinion that this lack of consistency leads to inaccurate reporting.

The main benefit of a standard reserve fund study is the ability to educate all involved with these studies. Without standardization, the teaching of reserve fund studies can only be conceptual. The practicality of teaching a specific standard can not be underestimated.

A practical and easily understood reserve fund study standard is critical.

6.4.2 Methodology Clarification

Recently through the Condo-Ology™ Network on LinkedIn I discovered that in Ontario individual engineering firms' methodology for the preparation of reserve fund studies varies from the Real Estate Institute of Canada standard (CPR - Certified Reserve Planner). The CRP program is merely education specific to reserve fund studies. Outside of this education, there is no meaningful standard education related to reserve fund studies in Canada. The Association of Professional Engineers of Ontario is currently working on their own standard of methodology but will not apply to non-engineers.

It is my understanding that the key variances between the methodologies is a result of the difference between the sinking fund analysis method vs. cash flow basis (adequate) fund analysis method in determining requirement for annual contributions. The explanation of these variances is best to be left in to those that have the expertise.

In the best interest of the condominium owners, there should be only one standard method of reserve fund studies to be followed by all parties who are legislated to perform reserve fund studies. I stress this standardization of the reserve fund study is such crucial component of the financial stability of the operations of a condominium corporation.



6.4.3 Need for Annual Updates

I strongly believe that a third party annual update is necessary.

I am currently working with a very patient and helpful engineering firm, condominium manager and the board of directors who have committed to annual updates (Condo-Ology™ Concept). For the time being, my goal is to reduce engineers' committed time to less than two hours per update. To achieve this goal, the data required from the condominium manager to the engineer must be presented accurately.

I am adamant about the importance of annual reserve fund updates. Planning out 10, 20 and 30 years can be an overwhelming task. Complicating things further, studies must be supported by an upwards of 60 plus directors and hundreds upon hundreds condominium owners in a given 30 year period.

In the event that the new Act does not legislate annual updates, it is my opinion that the Act or Regulations must incorporate the necessary wording for those condominiums that have or may commit themselves to annual updates.

Furthermore, I believe that the author of the study should play a larger role in the management of the condominium corporation reserves. I would go as far as to say that they should have the legislative duty to report irregularities.

An additional benefit of the annual update is the update will educate the board and owners annually, and keep fresh the status and importance of the reserve fund study.

Eventually the recommendations outlined in the reserve fund study will become budgeted items, so any argument stating a reserve fund study as only a recommendation is eliminated.

Once updating reserve fund studies annually is imbedded in the corporations procedural operations, the board member's worse nightmare - finding out the reserve fund is totally inadequate, is eliminated.

With this kind of current information, all owners can then follow the management of the reserve fund on a continuous basis with the knowledge that an independent third party is monitoring.

Additionally, the annual update forces the board, manager and the author of the study to work hand-in-hand to achieve ongoing reserve fund management accountability. To further



reinforce this shared responsibility, I suggest that the annual update must be signed by the board, manager and the author.

The annual update will use the current interest and inflation rates and thereby eliminating the guesswork for these rates.

It is important to note that many or most engineers still use the averaging of the last five years for both the inflation and interest rate as the current rate in their studies. Unless some economist can prove to me that this practice of averaging is an accurate way of determining what the future has in store for us, I would suggest all studies use the current rate and eliminate this practice of averaging altogether.

A good reserve fund study acts as an excellent capital improvement planning guide.

6.4.4 Using Reserves Funds for Installing Energy Technologies

Using reserve funds for installing energy technologies is an idea that has been submitted by ACMO and CCI in their legislations brief.

Unfortunately, poorly managed reserves are the root of all financial evils of condominium ownership. Operational annual expenses are important, but they are the easiest to correct. In my opinion, one of the top reasons condominium corporations falter is poor management of the reserve fund obligations.

My concerns with the above recommendation are outlined in the following discussion.

The additional authority that will be given to boards to use reserve funds for installing renewable energy technologies and other energy technologies without owners' approval.

The suggested change is counter productive. Any funds removed from the reserve fund balance, which have not been contemplated in the corporations reserve fund study, will immediately cause a financial shortfall for the replacements of existing components of the common elements.

The other aspect to consider is that the newly installed equipment must be immediately classified as a new component of the condominium common elements, so that funds can be set aside for eventual replacement

Allowing this suggested change, will negatively affect the reserve fund objectives by:



- 1) Reducing the balance of the reserves for an non-budgeted component; and,
- 2) New and additional increases of future reserve funding for eventual replacement.

Renewable energy technologies and other energy technologies can be extremely beneficial, not only for condominium owners, but for society in general. However, it is the manner in which the funds are raised that should be of concern.

Currently, there are a numerous ways of raising funds for condominium corporations seriously contemplating the introduction of renewable energy technologies and other energy technologies for their communities.

Suggested funding for such an initiative would include:

- 1) Special assessment - certainly would not be the number one choice but if there is a return on investment it is a very viable option.
- 2) Borrowing - only if the borrowing costs can be covered by the savings generated.
- 3) Contractor/installer participates - by accepting payments from the savings generated.
- 4) Finally the old fashion way - save until you have the desire funds available.

6.5 Conflicts of Interest

Perception is real and is something that must be dealt with in a frank manner. The following discussion pertains to conflicts of interest with a specific focus on Board Members, Management Companies, Condominium Managers, Condominium Organizations and the new Advisory Group to the Ministry.

6.5.1 Board Members

All board members have conflicts of interest; it is the nature of the beast. Simply put – by residing in one particular building in a multi-building condominium development will give rise to the appearance of conflict of interest.

These unavoidable conflicts can be greatly reduced by sticking to the basic philosophy - "Directors (via board of directors) are to direct and managers are to manage." In addition, corporation's' governance should be clearly defined.



To avoid the perception of conflict, neither directors, nor Shared Facilities Committee members (if applicable), nor any of their immediate family, should provide paid services or products to the corporation or Shared Facilities, nor should any person be in a position for personal financial gain through volunteerism.

Specifically, a director or a Shared Facilities Committee member should not be able to work directly or indirectly for his or her own condominium corporation or for the condominium corporation's management company.

Are these provisions restrictive? Absolutely not - individuals without conflicts are more than capable of filling the role of directors.

Declaring a conflict of interest does nothing to eliminate the perception of conflict.

6.5.2 Management Companies

It is my position that, management companies should not employ board members of condominium corporations of those they manage.

Conglomerates now own management companies, as well as related condominium industry service or product providers. I believe it should be mandatory that all management companies clearly specify their ownership, partnerships and arrangements with various services or product providers.

Many management companies today advertise a preferred list of contractor and service providers for their clients and state that due to volume, these companies will provide discounted prices.

These recommendations need to be further flushed out.

- Discount prices as compared to what?
- Is there a fee involved (directly or indirectly) for those contractors or service providers to have their names included on the list?
- Are their clients forced to use these companies etc?

These unknowns must be declared.



6.5.3 Condominium Managers

Throughout my management career in the industry, I have been fighting the perception that I, along with my fellow condominium managers, receive kickbacks in a number of ways. I wish I could speak to the integrity all condominium managers, but I cannot. To assume the condominium industry does not have its fair share of thievery would be naive.

As a condominium manager, I have been extremely vigilant in my deals with service/product providers. Unfortunately, the perception that dishonest transactions are commonplace remains, and will continue to remain unless dealings are more transparent.

Required action:

In the PPP document (Condo-Ology™ Concept), the condominium manager is required to identify all companies or individuals that will be utilized during the fiscal year in their annual budget presentation. If during the year a service/product provider is added to the list, the condominium manager must inform the board and provide an explanation.

All personal usage of companies on the corporation's trade list shall be avoided or immediately reported to the board in writing.

Tender documents received must be: sealed, the date of receipt recorded, and must be opened in the presence of the manager and board or in the presence of one board member, with the board's permission.

6.5.4 Condominium Organizations

As mentioned above, I have been fighting this perceived conflict of interest throughout my entire career. Unfortunately, some condominium organizations have done nothing to address this public perception and if anything they have fueled the fire. The practice of industry organizations organizing frequent social events for management staff including individual condo managers and service/product providers is very disconcerting; it creates the appearance of impropriety.

At both Public Information Sessions I attended, the perceived notion is that there is a cozy relationship between contractors (Associate Members) and management companies' employees including managers was seen as unacceptable - this practice must stop.

6.5.5 Advisory Group Appointed by the Ministry



I understand that the ministry will need assistance to fully understand the issues that are raised during the review and that the appointment of an Advisory Group is necessary. As noted in the recent ministry bulletin, all Advisory Group Members have agreed to balance all interests that are at stake when giving their advice and recommendations. However, I see a problem with the perceived conflict of interest of at least one of the members.

Armand Conant is the Past-President of the Canadian Condominium Institute (Toronto), where he continues to serve on the Board of Directors and is Chair of the Legislative Committee. Under Mr. Conant leadership the committee submitted an extensive legislative brief to the Ontario government with recommendation for changes to the Condominium Act. Additionally, Mr. Conant is also Co-Chair of the joint ACMO and CCI (Toronto) Government Relations Committee and a member of CCI National's Government Relations Committee.

It is my opinion that his appointment presents a significant perception of a clear conflict of interest. I do not understand how the public is supposed to accept that Mr. Conant will be in the position to balance his interest as he advises the ministry.

6.6 Licensing

I think there is universal agreement in the condominium communities and the condominium management industry, that licensing for management companies and individual managers is absolutely necessary.

The issue: What requirement would be necessary to meet licensing qualification and who would the licensor be?

Being a licensed condominium manager should be no different than any licensed profession; once received, the educational requirement will be sufficient to begin the practice of condominium management. I believe all current RCMs should be grandfathered in and receive their condominium manager license. The future license requirements for a condominium manager at minimum should be similar to that of a Residential Real Estate License if proven achievable. Anything less would be disrespectful to those currently in the industry.

6.6.1 Association of Condominium Managers of Ontario (ACMO) as Licensor for the Condominium Manager

In a recent ACMO report, ACMO stated that they would opt out from seeking to be named a governing body for condominium managers, but would like to set regulations for RCMs and management companies. Additionally, during a recent ACMO luncheon, the moderator



stated that ACMO's intention is to be in charge of licensing all condominium managers.

In my opinion there is a substantial flaw in logic in these two intentions - How can one opt out of the role of governing body, and yet oversee all licensing?

In 1984, my first year as a property manager, my starting salary was \$28,000.00. I called the ACMO office earlier this year, and was surprised to discover that the Association of Condominium Managers of Ontario did not know the average salary of today's condominium manager.

This information should be instrumental to monitor advancement in the profession. My best estimate, not including the career positions of area or regional supervisors, the average condominium management company salaried front line condominium manager is well under \$50,000.00

ACMO has had the benefit of 30 years to define the front line condominium manager as a proper professional. It might be time to investigate other organizations to move the profession forward. Other notable organizations which may garner investigations include (but are not limited to):

- Real Estate Council of Ontario – RECO
- Real Estate Institute of Canada – REIC
- Ontario Real Estate Association – OREA
- Canadian Society of Association Executives – CSA
- Building Owners and Managers Association - BOMA

6.7 Education

The following discussion pertains to education with a specific focus on Court Appointed Administrators, Condominium Managers, Directors, Realtors and Owners.

6.7.1 Court Appointed Administrators

In extreme situations of poorly managed condominium corporations, the provincial government has the authority to appoint a Court Appointed Administrator to act with the same authority as a board of directors.

The Court Appointed Administrator has a tremendous amount of responsibility. I feel this is prudent to point out the following considerations with respect to the appointee:



- There are no prerequisites or qualifications guidelines as to who would be a suitable candidate.
- There is no list of pre-approved candidates that a judge or a board of directors can choose from.
- My best understanding is that the board of directors' legal representative will choose a candidate or personally take on the task themselves and then ask the court to approve the appointment.

The lack of proper vetting of qualified appointed administrators is not just a condominium industry responsibility, but that of the government as well.

6.7.2 Condominium Managers

Presently, I am unaware of any full-time post-secondary courses being offered for condominium managers. Select colleges are offering part-time required courses which are required before writing the RCM exam, but these colleges are competing with large ACMO appointed condominium management companies who are providing the same courses in-house.

As of the week of September 14th, 2012 there were 747 Registered Condominium Managers (RCM). More than 300 of the 747 RCMs work for management companies that have been given the authority by ACMO to provide in-house courses.

This does not sit well with me and I wonder what could have been, if the industry remained pro-active as they were in the 80's in the encouragement and support of full time property management studies at our publicly funded colleges.

I am not familiar with the current courses required for ACMO's designation Registered Condominium Manager RCM but as a comparison the review should investigate the designation requirements of the Certified Property Manager CPM from the Real Estate Institute of Canada. An advantage of the CPM is the fact that the Real Estate Institute of Canada has two complimentary designations to the CPM which is the Certified Reserve Planner CRP and the Associate Reserve Planner ARP a significant step in the professionalism of condominium managers.

6.7.3 Directors

Condominium directors should be encouraged to:



- 1) Become increasingly comfortable with current technologies;
- 2) Develop an understanding of budgets/financial statements;
- 3) Take the time to understand the logic and the necessity of a proper reserve funds and the importance of the reserve fund study; and,
- 4) Understand the value of a competent professional condominium manager.

Both the Association of Condominium Managers of Ontario (ACMO) and the Canadian Condominium Institute (CCI) indicated in their legislative brief that all newly elected directors should be mandated to attend an introductory director's course.

On first glance this may seem very logical and beneficial, but I am suggesting this implementation will immediately eliminate qualified owners (desperately needed – Ontario needs approximately 25,000 director volunteers annually) who may wish to assist with the affairs of their condominium corporation.

The number one issue for individuals not volunteering, according to the 'Canada Survey of Giving, Volunteering and Participating', is lack of time (76%), and secondly, the inability to make a long term commitment (52%).

I have worked with over a thousand directors from all walks of life. Most front line condominium managers will agree that the best directors are those who are busy and most likely volunteering for other community organizations and feel an obligation to eventually take a turn as being a director. These individuals know how to delegate, work with others, and create solid evaluations by listening to experts – decision making based on common sense and what would be best of the long term for all. The condominium communities and the industry need individuals such as these which I have had the good fortune to work with.

Any additional time requirements placed on these volunteers will be counterproductive. In my opinion, the opposite - a reduction in time requirements for the position of director, will serve to attract more owners willing to take their turn.

6.7.4 Realtors

With the Condo-Ology™ Concept, realtors will play a major role in the educating of the public before a potential buyer considers purchasing a condominium. I would like to suggest



the Real Estate Council of Ontario (RECO) add a third real estate license – a condominium specific real estate license.

The best place to start to educate condominium owners is by educating those who sell condominium units. I believe this initiative is achievable and would receive support from realtors if the mandatory annual education credits needed to maintain their current license could be used towards earning their condominium real estate sales license. Realtors with their condominium real estate license should be allowed to advertise this as a value added service.

6.7.5 Owners

It is my experience that far too many current owners are ignorant of various restrictions they must live by as put forth under the guidelines in their condominium corporation's documentation. The bottom line is that some owners (and even directors) are ill suited for a condominium lifestyle.

Regulators set regulations to ensure that the consumer or client is adequately apprised of the various risks and obligations before making a commitment. For example, under regulations set by the Investment Industry Regulatory Organization of Canada, before accepting the funds, the financial money manager must review a form known as 'Knowing Your Client' with the client. This document spells out the various obligations, pitfalls and possible risks etc. Once completed, the form must be signed by both the money manager and the client, acknowledging this review process has been completed.

With condominium purchases, there are no regulations to force the new purchaser to understand their responsibilities and possible repercussion of condominium ownership. There are no mandatory forms signed by the purchaser acknowledging their understanding of condominium ownership.

Who should take the role of the money manager in the condominium setting?

I believe most good real estate lawyers are already doing this as part of their review of the condominium documents with the new purchasers, but I think ultimately it should be the responsibility of the condominium manager. A professional condominium manager is closer to the situation, and therefore should have local (specific) knowledge of the condominium corporation which the lawyer may be unaware of. But even more importantly, the purchaser will meet face to face with their future manager, similar to a trusting relationship they might have with their money manager.



6.8 Regulating/Regulator

There is no doubt that there is confusion about self regulation and many believe that the condominium industry is presently self-regulated. The industry is not self regulated. I wrote to the government, hoping for an explanation of the current set up. Their reply was posted on their Facebook page. See below:

- Condominium refers to a type of property ownership, and condominiums vary in size and type.
- Condominiums are run collectively by condo unit owners through an elected board of directors.
- The Condominium Act, 1998 is a framework Act that, together with its Regulations operates in conjunction with a condominium's declaration, by-laws and rules.
- The Act contains almost 200 sections and has two regulations. The Act provides for things such as: the sale and lease of units; the rights, powers and duties of condominium corporations and owners; by-laws and rules; finances; and formal dispute resolution through mediation and arbitration.
- The Act provides for the registration and creation of condominiums and sets out certain rights and protections for condominium buyers and owners. It gives unit owners the tools to run their condominium corporations with minimal government involvement. These tools include: Requirements to hold meetings; Documents for owners; Procedure to change by-laws/rules; Procedure to appoint/remove board members; Repair and maintenance of condominium; financial management and reserve funds; Responsibility of owners for common elements.

It appears that the condominium industry and communities will require some sort of regulator. Once the particulars of the regulator are decided, I believe the effectiveness of this review will increase substantially.

6.9 Dispute Resolution

This section pertains to dispute resolution of interest with a specific focus on non-compliance, and the failings both of mediation and arbitration.

6.9.1 Non-Compliance

The review process of The Act must take a hard look at dispute resolution. My personal experience has been very positive in regard to compliance of various restrictions/obligations



within the condominium corporations' documentations and The Act. I have not found myself in a position where the board of directors and I were contemplating professional (third party) mediation or arbitration. I would guess that in 95% (or higher) of my non-compliance situations were solved by proper communications, at times a face-to-face discussion of all parties was required. In the remaining 5%, a lawyer's letter was sent, but never did issues result in mediation, arbitration or the courts.

6.9.2 Professional Mediation Can Be Inefficient

Mediation has been the foundation of quality condominium corporation operations (owners/directors/managers) since the beginning of the introduction of condominium ownership. Condominium ownership and lifestyle is all about compromise - it has to be in a communal living situation. If internal mediations have not worked; then to speed up the process, I believe that the parties should go directly to arbitration.

6.9.3 Arbitration is Costly and Time Consuming

The following is my "out of the box" thinking without consideration to any specific legality.

Assuming some kind of condominium regulatory body has been established, conflicting parties would submit their argument in a report that would be shared with the opposing party. A rebuttal report would be allowed.

The two reports and two rebuttals would go to a 10-member panel (all condominium owner volunteers working from home, but monitored by a qualified arbitrator) who would make their decision independently of each other. The conflict is settled by a majority of votes.

If the regulator body has the authority, then the decision is final. Alternatively, if the regulator has not been given this authority, there would be an appeal process. If an appeal process is deemed necessary, the regulator body would be responsible to defend (all costs) the ten member panel decision.

6.10 Consumer Protection for Buyers

The following discussion pertains to consumer protection for buyers with a specific focus on Tarion warrantee protection, developers retaining or leasing common elements, artificially low common elements fees, and a review of condominium documents and agreements of purchase and sale.

6.10.1 Lack of Tarion Warrantee Protection for Conversions



I believe that conversions should be added to Tarion. I do not have a full understanding of why conversions are not currently covered. I assume that this has more to do with the internal workings of Tarion, since its mandate is to warrantee new construction.

6.10.2 Developers Retaining or Leasing Traditional Common Elements

I was not aware of this practice until I became involved with this review. This practice should never have been permitted. I find it hard to believe the municipalities allowed this to occur.

6.10.3 Artificially Low Common Elements Fees in the First Year

As far as artificially low maintenance fees are concerned, I believe these are caused by three (3) fundamental reasons:

- 1) Like anything new, there is normally a warrantee for a time period. Therefore, when an issue arises within the warrantee period, it is the responsibility of the company that supplied the product or performed the work to make the necessary corrections at no cost to the condominium corporation. After the warrantee has expired, these costs become that of the condominium corporation – I am not sure if anything can be done to change this situation - like owning a new car, normally there are no repair costs for a certain time period.
- 2) Currently, the Act allows developers to only use 10% of operating budget as the first year reserve fund annual contribution, and I believe that the general consensus is that this is not enough. I have heard that perhaps 20% or 25% might be more suitable.

I would suggest that developers must use 40% of the first year operating budget as the annual contribution, UNLESS the developer prepares a reserve fund study (which becomes part of the condominium documents) that specifically states the first year reserve fund contribution; or better still, it should be mandatory that all developers provide a comprehensive reserve fund study to determine the required contributions.

- 3) I understand that a few developers intentionally reflect reduced expenses thereby resulting in artificial low maintenance fees to entice more sales. I have worked for several developers and not once did the developer ask me to artificially reduce annual operational costs. On the other hand, I have only experienced one developer that agreed to double the first year mandatory reserves requirement of 10% of



operations.

6.10.4 Condominium Documents and Purchase and Sale are Opaque

I suggest that the condominium industry learn from the various real estate boards and use approved standardized condominium documents and Agreements of Purchase and Sale for new condominium units.

Related condominium documents are an entirely different issue, mainly because of uniqueness of the various condominium developments. Depending on the quality of the documents, some documents will cause a tremendous amount of cost year after year, as well as conflict and continuing confusion. The use of standard clauses and clearly defined legislated would be a great first step.

Declarations and shared facilities documents can be very complicated in large phased in, or multiple condominium corporations' developments because of the developer's long term involvement. Changing a declaration or a shared facility agreement once the project is completed, can be quite the challenge and at times basically impossible.

To alleviate this issue, I am suggesting that one of the two following options be undertaken:

- A) The developer could be responsible to provide two sets of documents - one during the developer's involvement and one after the developer involvement; or
- B) Legislate the ability to change the condominium documents wording (only once) as long as the intent does not change, without seeking the necessary impossible percentages required for owners approval.

6.11 Investing/Borrowing

I agree with the current legislation requirements with regard to investments (for example, must be guaranteed, etc), but should the legislation not include provision pertaining to the quality of the financial institution/company from whom condominium corporations may borrow funds? In my opinion, this is particularly relevant as some of these loans are exceeding five million dollars and could easily affect the financial stability of the condominium corporations for years to come.

I have had some experience in regards to condominium borrowing funds rather than raising funds through a special assessment. I continue to have a real problem with this practice. For



those condominiums that do borrow funds, it could just be the tip of the iceberg. As an example, just look at what borrowing has done for the other levels of government. I assume that this option can be a necessary evil but borrowing should always be the last resort.

Borrowing millions of dollars is not something to take lightly. How many condominium managers or directors have any experience in dealing with such an important transaction?

The repercussions of making a mistake of this magnitude would be astronomical. I don't have any suggestions at this time, but I do think this is serious enough issue that it should be reviewed during the ongoing review process.

6.11.1 Mandatory Option: Owners May Pay Portion of Condominium Corporation Loans

Technically, according the current Act, the repayment and interest of any funds borrowed by the condominium corporations is paid by the owners is in accordance to the units' allocated percentage of the common elements.

Individual owners should be given a legislated opportunity to opt out of the loan and be allowed to pay their share up front.

There are many owners, especially retirees that may have the cash available to cover their unit's percentage of the loan. It makes no sense to force an owner to pay for a loan with a non-deductible high interest rate on funds they do not require.

I know for a fact that condominium accounting software can deal with these situations.

6.12 Standardization/Clarity

For long-term successful condominium ownership outcomes, standardization and clarity is paramount.

Assuming all reserve funds studies had one standard model: same look, charts, and definitions; with this in hand the instructor will not only be able to teach and discuss the objectives of the reserve fund study, they can accurately teach the standard as well.

Even simple standard items, like a clear set of condominium definitions, within the new legislation would go a long way assisting all of us.

Standards should be written in plain English and at a level of comprehension that all owners can understand.



The future new Act should be written in a way that all owners can easily understand. Boards of directors should not have to always seek legal opinions for various clauses within the Act. If a particular clause requires complicated legalese, then a footnote should be included in layperson terms explaining the intention of the clause.

6.13 Data/Information

Our industry does not have access to industry wide data that can assist or monitor condominium communities' performance. Without this data, analyses in many capacities are impossible.

Collected data would be very useful in monitoring the professional practices of management companies, as well as those of individual managers. Boards of Directors have nowhere to obtain past history to assist with their search for suitable management.

Examples of where this performance history may be useful include:

- I have witnessed two condominium corporations (in very close proximity to each other) fired their management company and then proceeded to hire each other's past management company.
- I am also aware of two management companies who each fired an individual property manager and shortly after hire each other fired manager. Both were fired again!

Reliable data can only prove beneficial.



APPENDIX 'A' – TOM LEPAGE BIOGRAPHY



TOM LEPAGE BIOGRAPHY

I actually chose condominium management as a profession and enrolled into a full time two-year property management course at George Brown College from 1982 to 1984. Prior to that, I held a real estate agent's license, as well as a Broker's License.

During the two years of study at George Brown, I finished up the necessary night school courses at Ryerson Polytechnical Institute, Toronto, to receive the designation of Fellow of the Real Estate Institute (FRI) from Real Estate Institute of Canada. Simultaneously, I began taking courses to fulfill the requirements necessary for the designation of Certified Property Manager (CPM).

In 1984, I received my FRI and in 1988 I became a CPM.

Upon graduating in 1984, I immediately secured a management portfolio of condominiums and a small office building.

In 1986, with two years of experience and a passing grade on the Registered Condominium Manager exam; I became a RCM through the Association of Condominium Managers of Ontario.

After three excellent years with the same company, in 1987, I jumped at a career opportunity and move to Collingwood, ON; in 1989 LePage Management Inc was incorporated.

In 2000, I earned the designation of an Associate Reserve Planner.

In 2004, LePage Management hired its first and only additional condominium manager. This hiring had been a four-year pursuit, underscoring my personal high expectation for front line condominium managers.

In 2010, I enrolled in a week long Alternative Dispute Resolution workshop. The process of mediate dispute resolution was the main focus. It quickly became very apparent to me; informal mediation had, and continues to be, an intrinsic part of a successful condominium manager.

With a portfolio of 33 condominium corporations, and a number of Shared Facilities and a marina under contract, I gave my two-year notice to all clients and staff that my front line condominium manager career was coming to an end. By June 2011, I was no longer a front line condominium manager nor was my firm responsible for one single unit.