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A Case Study of Ontario's Condominium Act Review

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The Public Policy Forum is an independent, not-for-profit organization dedicated to improving the quality of government in Canada through enhanced dialogue among the public, private and voluntary sectors. The Forum's members, drawn from business, federal, provincial and territorial governments, the voluntary sector and organized labour, share a belief that an efficient and effective public service is important in ensuring Canada's competitiveness abroad and quality of life at home.

Established in 1987, the Forum has earned a reputation as a trusted, nonpartisan facilitator, capable of bringing together a wide range of stakeholders in productive dialogue. Its research program provides a neutral base to inform collective decision making. By promoting information sharing and greater links between governments and other sectors, the Forum helps ensure public policy in our country is dynamic, coordinated and responsive to future challenges and opportunities.

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INTRODUCTION

The Public Engagement Project

In August 2009, Canada's Public Policy Forum launched the Public Engagement Project, a multi-year initiative to help governments build the capacity for effective public engagement. Involving more than 2,000 public servants across Canada and abroad, the project began with a series of seminars and workshops before graduating to pilot or demonstration projects to test the new ideas.¹ What we learned was consolidated in a book-length report, *Rescuing Policy: The Case for Public Engagement*, written by Don Lenihan and published by the Forum in 2012.

The Government of Ontario was a highly engaged participant in the Public Engagement Project and so in the spring of 2012 the Forum approached the government to suggest that it launch a pilot. Shortly after, the Ministry of Consumer Services, (now known as the Ministry of Government and Consumer Services), responded with an invitation to the Forum to design and lead a public engagement process to renew the *Condominium Act, 1998*.

This case study examines the various stages and steps in the process and gathers together key lessons learned along the way. It shows how public engagement can reduce policy tensions between stakeholders to arrive at shared solutions that can then serve as the basis for policy and legislation. The study is intended to help officials in the Ontario public service—and across the country—understand how and why public engagement works. We trust it will help build confidence in the approach and encourage other ministries and governments to undertake projects of their own.

¹ These pilots included a poverty reduction process in the Territory of Nunavut, a series of community dialogues to align services in Australia, and the renewal of the Canadian Sport Policy by Canada's 14 federal, provincial and territorial governments. Case studies and final reports from these projects are available on the Forum's website at: <http://www.ppforum.ca/engagement-community/resources>

WHAT IS PUBLIC ENGAGEMENT?

A collaborative approach to policymaking

Many public policy issues today will not be solved by governments acting alone. In areas like population health, climate change, or workforce training, citizens, communities, and/or stakeholders often have a crucial role to play. For example, if we want to fight obesity, parents must get their children to exercise more. If we want to reduce greenhouse gases, communities must work together to modify local life-styles. And if we want better apprenticeship programs, community colleges and businesses may need to team up with government to provide them. Public engagement is a new way of thinking about how governments, stakeholders, communities, and ordinary citizens can work together to solve such issues. The Public Policy Forum's Public Engagement Framework treats engagement as a single process with three distinct but successive stages: 1) views; 2) deliberation; and 3) action:

- 1. Views:** In the first stage, participants have the opportunity to express their views on a topic. Typically, this might involve posting ideas online, filling out a survey, or attending a town hall session. In this stage, public engagement is a lot like a traditional consultation. But in consultation, once the views have been expressed, the public's role is done. Government then deliberates over these views—usually in private—and makes choices between them. If the options are fairly clear and the reasons for choosing one over another have been well aired, the process usually works well enough. However, the more complex the issue, the more difficult it becomes for government to explain the rationale for the choices it makes. As a result, decisions made behind closed doors start to seem arbitrary or even biased. This erodes legitimacy and can leave participants feeling manipulated and suspicious.
- 2. Deliberation:** In such cases, preserving legitimacy requires a different approach. Once participants have expressed their views, rather than withdrawing to deliberate over them in private, government can ask the public to play a more engaged role in the deliberations, and work through the issues and options together to try to consolidate different views. In this stage, participants will call on one another to provide evidence for their views, weigh

claims, set priorities, and make trade-offs together. But this is not a free-for-all. Participants must be open to alternatives and treat one another with courtesy and respect. Clear rules must be followed, and the process must be structured to ensure fairness, order, and progress. Finally, the discussion must be properly facilitated to ensure that the rules are followed and applied fairly to everyone.

- 3. Action:** Sometimes, the dialogue will need to move into a third and final stage - action. If an issue is diffuse and interconnected, often the solution will be too. Implementing the solution may require effort from stakeholders and/or citizens, along with government. For example, an effective plan to reduce poverty may require families to support their members in new ways, businesses to change how they hire people, and governments to redesign programs. Everyone has a role to play. The action stage challenges citizens and stakeholders to discuss and identify what role they should play in helping to implement the solutions they arrived at in Stage 2. The public engagement approach views the public and government as partners and aims at getting them to work together to find *and* implement solutions to complex issues.

In sum, public engagement processes focus on shared interests and highlight the need for shared action. Much like [interest-based negotiation](#), the goal is to get all the stakeholders to see their interests more as interdependent and complementary so that a win for one can also be a win for the others. As the parties explore their shared interests, they begin to realize that they are better off working together to promote them than working alone. Collaboration becomes a win-win situation.

Furthermore, engagement processes are often iterative and unfold in cycles of dialogue and action. Each time the process is repeated, participants deepen their understanding of their common interests, expand their shared language, clarify issues and opportunities, build new tools, systems, and practices to support collaborative action, and, most importantly, establish trust and goodwill. In this way, public engagement helps build a culture of collaboration, continuous learning and effective change-management among the parties.

ONTARIO'S CONDOMINIUM ACT REVIEW PROCESS

The Condo Act Review project

Today, condos account for half of all new homes built in Ontario. With roughly 600,000 units in the province, about 1.3 million Ontarians call a condo their home. *Ontario's Condominium Act, 1998* is the principal piece of legislation that governs condo living. It is administered by the Ministry of Government and Consumer Services (MGCS), and provides the legal framework for creating and operating condo corporations.

Since the Act came into force over a decade ago, Ontario's condo sector has undergone remarkable growth. Changes to the size and type of condo buildings, the complexity of the market, and the number of people involved raise new issues, and the stakes are high. From an economic perspective, condos are a multi-billion dollar industry that employs tens of thousands of people, from lawyers and managers to builders and cleaning staff. For most owners, their condo is not only their home, it is their biggest asset.

As for condo corporations, they are much more than legal entities. They are *self-governing communities* that raise revenue from their members (condo fees), elect their own leaders (boards of directors) and make their own rules. Indeed, the condo sector is increasingly referred to as "the fourth order of government," after municipalities, the provinces and the federal government.

The issues facing the sector thus are not only legal or technical in nature. Increasingly, they are about relationships between stakeholders in the sector or within individual condo communities. These may include owners, other residents, board members, condominium managers, developers, lawyers and others.

When the Ministry of Consumer Services decided to review the Condo Act, officials quickly realized that the new tools it would have to provide would be used for more than managing the corporation's affairs. They would be used to manage the relationships within the condo sector and its communities. In short, the review process had to address the issue of *community-building*. The question was how best to achieve this.

At first, officials considered using a conventional consultation process. This might have included a series of town hall meetings and, perhaps, an online portal where stakeholders and owners could submit ideas and briefs. In such a process, people and organizations present their views, while the government listens. Once the hearings are done, officials go behind closed doors to consider the arguments and prepare options for the minister.

But consultations can be risky, especially where community-building is involved. The format is much like a tribunal, with participants competing with one another to influence the decision-makers. When differences are deep and the stakes are high, this can create tensions. Participants often press their case as hard as they can and may even resort to tactics to create a sense of urgency around their cause.

As a result, positions easily become polarized, making it hard for a government to find common ground. It also means that, in the end, there are winners and losers — not a good way to promote community-building.

Instead, the Ministry opted for a very different approach. It invited the Forum to develop and lead an innovative public engagement process that would challenge owners and stakeholders to *collaborate* to identify issues, consider options, and propose recommendations to renew the legislation.

Through the months of July and August 2012, the Forum worked closely with Ministry officials and MASS LBP to design a three-stage, 18-month review process to achieve these goals. The review process was launched in the fall of 2012 and completed in January 2014. The main report, *Growing Up: Ontario's Condo Communities Enter a New Era*, proposed over 100 recommendations.

Planning the process

Good regulation is not enough to ensure the success of individual condo communities. Owners and stakeholders are members of a single community who share common interests. Like good neighbours, they must learn to work together to manage their differences to achieve their common goals. Good regulation must be supported by better information, more education and training, effective conflict resolution, and engaged owners. Everyone has a role to play. To produce the tools the sector needs, the process had to challenge the participants to think beyond their personal or organizational interests. Taking account of our limited resources and relatively short timelines, the Forum identified five main challenges in designing the process:

- **Range of issues:** Some issues were well known from the start, but others were not. Moreover, different groups within the community often saw the issues very differently. To ensure the process would do justice to the range of issues and opinions, we began

by “mapping the territory,” that is, calling on the participants (including Ministry officials) to identify the issues they felt needed to be discussed, as well as the options they thought would solve them, and the rationale to support them. We thought this would ensure the review was not only comprehensive, but reflected stakeholders’ real concerns.

- **Range of stakeholder interests:** Being inclusive does not mean that every group gets to speak, but that key *interests* within the sector must be fairly represented. The range of stakeholder interests within the condo sector is not that great, which made the challenges around inclusiveness a little easier. However, it was important to distinguish between owners and other stakeholders, such as managers, builders, condo lawyers and consumer advocates. Although owners are a kind of stakeholder, their status is unique. If condos are the fourth level of government, owners are the “citizens” within these communities. We had to ensure the process not only reflected the diversity of interests within the condo community, but also did justice to the difference in status between owners and other stakeholders.
- **Size of the condo community:** If the range of stakeholders was relatively small, the size of the condo community was large and our resources and timelines were very limited. There was no effective way to reach more than a small percentage of the stakeholders or the 1.3 million Ontarians who live in condos. On the other hand, in such situations, the list of key issues is usually not that large. As the participants explore and map the issue-space, it is not long before the list is complete and new participants begin to repeat what has already been said. From a methodological viewpoint, this means limited time and resources needn’t prevent a process from being inclusive. It is possible to identify the key issues—and to make a fair assessment of how widespread and deep the concerns are—by talking to a relatively small, but representative cross-section of the community.
- **Understanding the process:** Almost none of the participants had been involved in a process like this one before. At first, most tended to assume that this would be just another consultation process and so their role would be to argue *for* their view and *against* opponents. Getting them to understand how a collaborative process works would take time. Participants needed to see collaboration start to work before they could really understand or trust the process behind it.

- **Readiness to commit to action:** Finally, in planning the process, we had to assess how ready the stakeholders were to take on real commitments to community-building. What is the point of creating, say, tools for better governance if no one attends the annual general meetings? The various groups were at various stages of organizational readiness. Clearly, there would have to be some awareness-raising and some capacity-building.

In sum, we needed a process that:

- Allowed participants to define the issues and options to be addressed;
- Recognized the special status of owners while being fair to other stakeholder interests;
- Encouraged the different groups around the table to look for common interests;
- Engaged a representative cross-section of people from the community;
- Educated the participants on their roles; and
- Began building capacity within the sector for collaborative action.

A final question concerned the role of government. While we agreed that officials should attend all meetings, we felt it was best for them to act mainly as observers and advisors. This did not preclude Ministry representatives from expressing views on the issues. For example, in the current economic and spending environment, it would have been counterproductive to allow participants to engage in difficult discussions around a costly measure that government would not have the resources to implement. Ministry officials agreed they should be open and forthright on such matters, and at various points during the process, they were called upon to provide the government’s perspective.

A high level of trust emerged between participants and officials. Participants often praised officials for their candour, expertise, professionalism and willingness to allow the issues to be defined through the dialogue. As a result, when officials felt they had to intervene to put limits on options being considered, the participants were respectful and willing to adjust their discussions accordingly.

STAGE ONE: DEFINING ISSUES AND OPTIONS

The four engagement streams

Stage one was launched in September 2012 and concluded with the release of the *Findings Report* in January 2013. The principal goals were, first, to identify key issues, propose possible solutions and provide the rationale; second, to ensure that the various interests within the condo community were identified and represented, with a special concern that owners felt their voice was being heard; and, finally, to educate participants about the process. To achieve these goals, we created four separate dialogue processes or “streams:”

- The Minister’s public information sessions;
- A residents’ panel of 36 owners and two renters from across the province;
- Stakeholder roundtables to represent key interests within the condo community; and
- Public submissions to ONCONDO through email or regular mail.

Minister’s public information sessions: This stream included five public information sessions across Ontario. Sessions lasted 90 minutes each. They were hosted by local MPPs and began with short presentations from Consumer Services Minister Margaret Best—who was the Minister at that time—and one of her officials, followed by Don Lenihan of the Public Policy Forum, who explained the process. After the presentations, we opened the floor and participants were free to ask questions or provide comments on condo issues. Attendance ranged from 35 to 200 participants, with over 500 people participating in all.²

In hindsight, the title of these events—“Information Sessions”—was misleading. As the description above suggests, they were more like town halls, even though this was not the original plan. At first, we intended to use the sessions to educate participants on the process. Although the Minister would be present, most of the talking was to be left to Lenihan, who would act as an expert on the process. But things did not go as planned.

Thirty minutes into the first session (Toronto, September 12th) it was clear that the participants were not interested in hearing about the process. They wanted to talk about the issues. As we struggled to stick to the agenda, the room grew tense and people became impatient and argumentative. They had come to pose questions and express their views to the Minister—and that is what they were going to do.

Obviously, there was a mismatch between our goal and that of the participants. They wanted to speak and we wanted them to listen. But insisting that they should sit still and listen only angered them and made them suspicious. We were clearly swimming against the current.

As a result, we quickly redefined our goal to align with that of the participants and reshaped the process accordingly. In effect, we converted the information sessions into town halls so that the roles were reversed: the participants were speaking and we were listening. In subsequent sessions there were no tensions and the discussion was easily managed. While there were moments of frustration and concern, these were not inappropriate. The format provided participants with an opportunity to get some things off their chests.

The town hall format had a second benefit. It created an open forum where anyone could express their views, helping to enhance the inclusiveness of the process. Comprehensive notes were taken at all sessions and a summary report was prepared that captured the issues, solutions and arguments raised in the sessions. Getting the word out may have been the biggest challenge. Despite support from local MPPs and use of local media, email, and social media, it was difficult to connect with more than a small fraction of the condo community in each city. There were also difficulties around scheduling. At various points throughout the process, people complained that the process as a whole—and specific events such as these—were not more widely publicized.

Residents’ panel: While the town-hall-type sessions did a good job of allowing individual owners to be heard, they did little to unite owners around a common view based on shared interests. Town halls are not designed for this. Most other stakeholders have associations or other organizations that work with their members to define shared interests, and then speak for the group as a whole—or some sizeable part of it. For example, the Association of Condominium Managers of Ontario fairly claims to represent a significant cross-section of condo managers, who are members of that organization.

While organizations and forums for owners are forming, such as the Condo Owners Association and the Condo Information Centre, they are relatively new and many owners are not aware of them. We felt that the

² Dates and locations of the events were: September 12, Toronto; September 19, Mississauga; September 27, Ottawa; November 7, London; and November 29, Scarborough.

³ The Civic Lottery was a random-representative selection process designed to identify and encourage citizens to step forward and volunteer to participate in a wide range of deliberative and civic initiatives. Using this method, MASS LBP sent a detailed invitation letter to a randomly generated list of 10,000 citizens who were condominium dwellers or owners across Ontario. This letter was, in effect, a non-transferable lottery ticket that invited a member of the household to opt into a pool of respondents. Once the response deadline had passed, the “winners” were randomly selected from the pool of respondents until a given number of demographic attributes, including gender, age, ownership status – resident owner, investor owner, renter – and geography had been satisfied, matching the overall demographic profile of the province. Invitations explained in detail what participants could expect.

engagement process should try to help promote this collective voice. The residents' panel—designed and led by MASS LBP—was a way to contribute. Thirty-six residents from across the condo community were selected through a “civic lottery”.³ Although the panel consisted mainly of resident-owners, six renters and landlords were also included. The panel met three times in October and November to learn about the Condo Act, identify priorities, and propose directions and options for improving the Condo Act.

Participants were asked to discuss the issues from a reflective and open-minded position, based on their shared interests as owners and residents, rather than just personal experience. The goal was to get them to provide a clear and balanced statement of the issues and to propose what they felt were reasonable solutions. The participants also agreed to re-convene for a fourth meeting at the beginning of stage three to review and comment on the *Solutions Report* that was supposed to result from stage two (see below).

The residents' panel concluded its deliberations with a lengthy list of recommendations, most of which were endorsed by all the participants, although there were minority opinions on some. In addition, it developed a list of seven basic values panelists felt should guide the development of the renewed Act:

- Well-being
- Fairness
- Informed community members and stakeholders
- Responsiveness
- Strong communities
- Financial sustainability
- Effective communication

These values not only established benchmarks for the kinds of improvements condo owners want from a revised Condominium Act; they also provided a clear and persuasive blueprint for the kinds of communities that owners want to build for the future.

The panel's final report played a key role in the process. It provided an authoritative, unified “owners' voice” on a range of concerns, including key values for condo communities, principal issues, solutions and rationale. Other stakeholders were appropriately respectful of this voice and during their discussions, they returned to the report time and again. This, in turn, helped set the boundaries within which more fine-grained, technical discussions of some of the issues took place.

Stakeholder roundtables: The Public Policy Forum organized and facilitated a series of four full-day stakeholder roundtables in Toronto on October 31 and November 7, 14, and 21, 2012 to identify issues and explore potential solutions. The process began with telephone interviews with 22 stakeholder organizations to assess the range of interests within the stakeholder community, prepare an agenda for the sessions, discuss how the process would work and ensure we were recruiting a balanced and informed group of participants. These calls proved extremely valuable. When participants arrived for the roundtables, many already had a good idea of what was expected of them and how the process was supposed to work.

The roundtables brought together some 25 stakeholders from owner associations, the building industry, the condo management sector, and consumer advocacy groups, as well as legal, financial, engineering, and mediation experts from the condo sector. As with the residents' panel, stakeholders were asked to speak from the viewpoint of their stakeholder group as a whole, rather than just a particular organization. As the residents' panel was convened concurrently, participants in the stakeholder roundtables were kept informed on the discussions in the residents' panel.

Although stage one is described as the “Views” stage, much of the time was spent exchanging ideas and weighing options and arguments. However, this was less about arriving at solutions than trying to agree on which issues needed to be discussed, how they should be framed, and what should be included in the range of possible solutions. At the same time, the discussions allowed everyone to take stock of where differences of opinion lay, how deep they were, and what the prospects for agreement might be in stage two.

A key concern about deliberative processes like the roundtables and residents' panel is that participants will seek to advance their own positions, while showing little willingness to consider other's views or to reach compromises. There was some of this in the Roundtables, but hard-edged advocacy was by far the exception rather than the rule. For the most part, participants were remarkably respectful of one another. They listened, weighed arguments, commented on differences and struggled to find agreement on the list of issues and how they should be framed. Moreover, when individuals showed signs of rigidity or a refusal to compromise, the other participants tended to band together to express

their collective concern. This proved to be an effective way for the group as a whole to call individuals to account who were showing signs of intransigence or unreasonableness, which, in turn, helped greatly to moderate such behaviour.

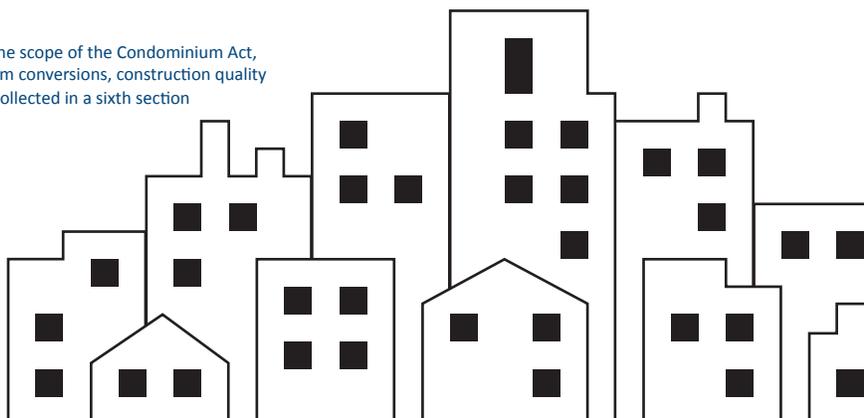
ONCONDO public submissions: Ontarians were invited to provide written submissions and comments to the Ministry, either by email or regular mail. All material was carefully reviewed, documented and, eventually, consolidated and used in the development of the *Findings Report* and the *Solutions Report*. ONCONDO proved to be an extremely important dialogue stream, not just for the ideas that it collected, but for the legitimacy it brought to the overall process. It ensured that anyone could send their ideas to government and have direct input into the discussions.

Deputy Minister's advisory group: An advisory group composed of experts from the condo sector was struck at the beginning of Stage One to provide advice to the Deputy Minister of the Ministry of Consumer Services. While this group was not officially part of the engagement process, it served as a useful sounding board for some of the views, arguments and positions that were surfacing from the process.

The Stage One Findings Report

Stage one concluded with the release of the *Findings Report* in January 2013, a 40-page document that consolidated the results from the four dialogue streams. The issues and solutions were grouped into five basic categories: governance, dispute resolution, financial management, consumer protection and the qualifications of condo managers.⁴ Care was taken to ensure that all major issues raised were included, along with the proposed solutions. The result was a reliable and comprehensive guide to the issues currently facing the condo community, the proposed solutions and the arguments being offered for them. While the report noted that no reform package would please everyone or solve all the issues, it also stated that a good one should address a critical mass of the issues and garner support from across the community. On this front, it concluded, there had been real progress. The report was published on the Public Policy Forum's website and Ontarians were invited to submit comments on it to the ONCONDO email address. In the following months, over 200 submissions were sent in response to the ministry. The report received wide praise as a balanced and comprehensive effort to identify the key issues and to prepare the ground for stage two of the process.

⁴ During Stage One, participants identified a number of condo issues that went beyond the scope of the Condominium Act, including concerns around property taxes, new home warranty coverage for condominium conversions, construction quality and building performance, insurance rates and development trends. These issues were collected in a sixth section and identified as important, but beyond the scope of the process.



STAGE TWO: FINDING SOLUTIONS

Goals and structure of the process

The *Stage One Findings Report* set the agenda for stage two. In essence, the task was to arrive at solutions for the issues posed in the *Findings Report*. Stage two was launched on March 21, 2013 when some 40 experts gathered in Toronto for a one-day orientation session to hear about how the process would unfold over the next three months. The process had two main parts. First, five small working groups were established—one for each of the issue areas in the *Findings Report*. Each group was supposed to work through the issues and options in its area. Once all the groups had reported, a panel of experts would review the recommendations from the five working groups—a process we described as “sober second thought.”

The working groups: Each working group included between eight and 11 members and was led by two co-chairs. A small panel was set up to identify possible members for the working groups. Our goal was to ensure that discussions of the issues would be both informed and balanced. Lists of possible members were compiled, based on ensuring fair representation from key interests in the condo community, such as owners, managers, consumer protection advocates and builders. In addition, each group had to have a high level of expertise in its specific topic area, such as financial planners, auditors, legal experts, engineers, insurance specialists, and so on. Lists of candidates were vetted with Ministry officials as well as the co-chairs before the members were recruited.

Each group was asked to work through the issues on its list to try to reach agreement on a preferred solution. Because the lists of issues were already long, groups were asked not to raise new issues, unless they felt this was necessary to solve one of the issues on their list. Participants were also warned about Ontario’s difficult fiscal situation, and the reluctance of owners and other stakeholders to shoulder new costs or fees. They were told to bear these constraints in mind when formulating their recommendations

The co-chairs were responsible for ensuring that discussion remained focused on the issues, positions were supported by argument and evidence, everyone had a fair chance to speak, and participants treated one another with respect. If participants were unable to arrive at agreement on a particular issue, the co-chairs were supposed to move them on. Eventually, unresolved issues would be decided by government. Although no decision-making rule was prescribed for the groups, all five agreed among themselves that a recommendation would be adopted if a majority of their members supported it.

Two common criticisms of processes like this are that people are not willing to give the time required to participate fully; and that when they do, they quickly get bogged down in disagreements. The working groups and expert panel processes were an impressive counterexample to both points. Given our limited resources, we were able to provide only limited administrative and research support to the five working groups. They were therefore warned at the outset that not only would they have to participate in many meetings over the coming months, but that they would be responsible for planning and organizing their own meetings, taking their own notes, and writing their own reports. Given the number of meetings and issues to be resolved, this was no small commitment. Yet all five working groups assumed these responsibilities without complaint and completed robust, often detailed reports within the allowed timelines. Even more impressive, all five groups reached agreement on all of their issues, with the exception of two relatively minor issues. The big lesson here for engagement processes generally is that people are willing to make real sacrifices to make things work, as long as they believe the process is genuine and that their role is meaningful.

The expert panel: Stage two also included a panel of 12 distinguished individuals from across the condo community, including the 10 co-chairs of the working groups, plus two members recruited from the working groups. As with the working groups, the panel was designed to ensure a balance of interests, along with a high-level of expertise. Each of the two co-chairs was selected with the overall goal in mind that the expert panel would also be balanced. The panel members had high levels of expertise in a variety of areas, including condominium law, condo management, finances, engineering, and consumer protection. We referred to this part of the process as “sober second thought” because the panel’s role was to review the recommendations of the five working groups, guided by four key questions:

- Are the recommendations fair and balanced, given the various interests at stake?
- Are the recommendations consistent across the five areas so that they form a coherent whole?
- Do the obstacles to implementation make them impractical?
- Do the recommendations offer effective solutions to the issues?

The expert panel held four full-day meetings to review the working group reports. Where panel members felt changes were in order, the members went on to discuss whether or how to improve or adjust the report. As with the working groups, the expert panel agreed that decisions would be



made by a majority vote. Panel members were expected to be respectful of the decisions made by the working groups and not to make changes without compelling reasons. This was not an opportunity to re-open the discussion, but to ensure that decisions were sound.

Because the Expert Panel included all the co-chairs of the five working groups, we were assured that its review of each working group's report would be well informed on the circumstances around any controversial decisions. The presence of the co-chairs also provided a key check on the Expert Panel's decision to make changes. Each working group report was presented to the panel by its co-chairs. Where panel members had questions or concerns the co-chairs provided explanations. Only when all panel members—including the co-chairs—felt the existing recommendations were inadequate were changes proposed. Although the Expert Panel did make a significant number of changes and adjustments to the working group recommendations, the working group's rationale was carefully considered and discussed before such changes were made. Moreover, such changes tended to be more in the way of clarifications, refinements or technical improvements. With a few exceptions, the Expert Panel reached agreement on all of its changes.

The Ministry: Officials from the MGCS attended all working group and expert panel meetings. Although they were not members of these committees, they were encouraged to offer advice and provide comments and suggestions, which they did regularly. Participants reported that, far from finding the officials' presence intimidating or awkward, the officials were an extremely helpful source of information, ideas and perspectives.

Engagement outcomes

The *Stage Two Solutions Report* is the combined result of the working group and expert panel discussions. It contains over 100 recommendations in the five issue areas. These range from short, simple recommendations on the need to make documents available online, to lengthy and highly technical ones on the use of reserve funds to purchase green technology. One recommendation requires closer attention.

The Condo Office: When the expert panel reviewed the working group reports, it found that many of the recommendations could be grouped under four major tasks:

- Informing and educating owners and stakeholders

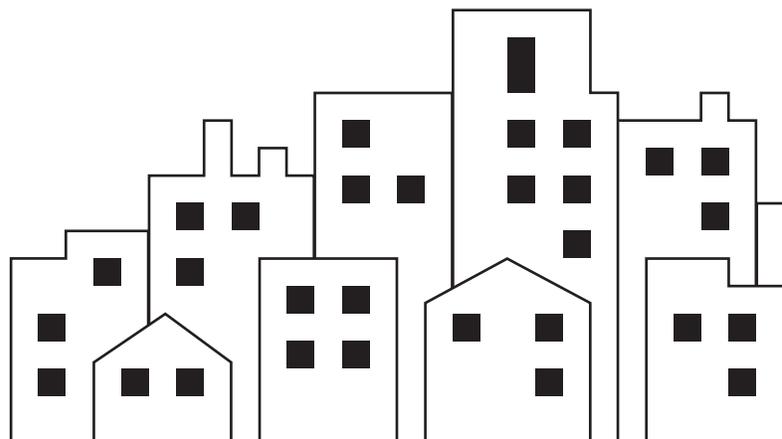
- Providing easy access to basic condo records
- Resolving disputes quickly and inexpensively
- Licensing condo managers

This observation led the expert panel to make its most important recommendation: establish a new comprehensive organization or Condo Office" to carry out or oversee implementation of many of the recommendations grouped under these tasks.

The Condo Office was not a new idea. Two of the working groups—dispute resolution and condo management—had already proposed the creation of new organizations in their areas. And owners and some stakeholders had been calling for some kind of new office or tribunal since the process began, though mainly to deal with dispute resolution. But if the idea of a Condo Office was not new, the scope and responsibilities assigned to it by the Expert Panel were unexpectedly broad. Moreover, as we've already noted, a key condition on recommendations with significant cost implications was that the participants had to propose ways to fund them. The panel recommended that the Condo Office be funded in three ways:

- A monthly contribution of \$1-\$3 from every unit (giving the Condo Office a budget of \$9-\$27 million per year);
- User fees for dispute resolution and other services; and
- Annual fees for licensing managers.

Although panel members felt the Condo Office was needed, there was genuine uncertainty over how condo owners would react to the proposed monthly fee. In earlier stages of the process, many condo owners who had called for a condo office also said they were willing to pay for it; and the expert panel believed that the benefits so outweighed the costs that owners would quickly accept it. Still, no one knew for sure and the uncertainty was worrying. If legislation were drafted on this basis, might there be any concerns among the owners who would have to make these costs, they wondered? The question was left hanging.



STAGE THREE: VALIDATING THE RECOMMENDATIONS

Key goals for Stage Three

In the Public Engagement Framework, action is the third stage of the process. In fact, the real action from this process won't begin unless the legislation is passed. Then stakeholders, condo corporations and the government will have to take the new tools in hand and put them to work. Everyone will have a role to play. We therefore described the goal of stage three as "validation of the recommendations," which we regarded as the first step in a larger Action stage that also includes legislation and implementation.

Typically, validation is the stage in a consultation process where government tests the decisions it has made behind closed doors with the public, who may or may not accept the results. However, our process had stakeholders and owners working together to define the issues and solutions. In some measure, this was supposed to make it self-validating and, as we shall see shortly, this assumption was confirmed in an important and unexpected way.

Nevertheless, however balanced the representation may have been in the various dialogue streams and stages, only a small fraction of the condo community were directly involved. Some form of open-ended feedback on the recommendation was in order. In the end, we settled on three separate streams, each of which contributed to validation in a different way:

1. A fourth meeting of the residents' panel was held to allow owners to review and respond to the recommendations;
2. The Ministry invited anyone to provide feedback through online submissions; and
3. A series of five roundtable sessions were held across the province to test the idea of the Condo Office.

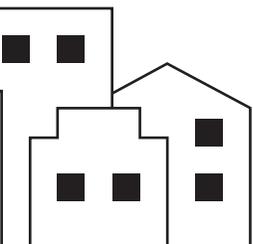
The residents' panel: On September 21 – 22, 2013 31 members from the original Residents' Panel regrouped for a fourth time in Toronto to review and assess the Solutions Report. This was the opening event of Stage Three and it provided us with an opportunity to validate the recommendations with owners. Panel members began by learning about the proposals and considering how well

they aligned with the values and priorities the panellists had set out in their Stage One report. After assessing the 100+ recommendations, the panel judged the Solutions Report to be an effective response to a large majority of their concerns and priorities. Their joint statement also urged the government to proceed with the development of the proposed Condo Office.

Submissions to ONCONDO: The *Solutions Report* was released shortly after the meeting of the residents' panel. A feedback survey was posted on the Public Policy Forum website, which could be filled out by anyone. At the same time, anyone could submit comments or briefs to the Ministry by email or regular mail. Altogether, over 1,400 people responded to the *Stage Two Solutions Report*. Together, these two tools gave us a second way to validate the recommendations, this time from the condo community at large. Overall, the assessments ranged from positive to very positive, though there were concerns about specific recommendations. With regards to the Condo Office and, more specifically, the call for a monthly fee to support it, the news was largely good. Of those who responded, 76% indicated full or conditional support for the funding model, where "conditional" was usually linked to an assurance this would not be "just another layer of bureaucracy" or that the monthly fees would not be subject to regular increases. However, if a large majority seemed to be endorsing the Condo Office and indicating their willingness to pay for it, there was some uncertainty over whether all four tasks should be included; and even more disagreement over how the costs should be shared between unit fees, a user-pay model and revenues from the task of licensing managers. We decided that the question needed further discussion, which led to the five roundtables.

The roundtables: In December 2013 and January 2014, roundtables were held in five cities across the province to include a cross-section of views.⁵ While the roundtables were open to the public, attendance at each session was capped at 20 people to facilitate constructive dialogue. Participants included interested condo owners and stakeholders who had previously contacted the Ministry to provide feedback or inquire about opportunities to get involved in the review process.

⁵ The cities, dates and numbers of participants were as follows: Ottawa - December 9, 2013: 11 participants; Mississauga – December 10, 2013: 12 participants; Toronto, December 12, 2013: 17 participants; London, January 16, 2014: 15 participants; Scarborough, January 23, 2014: 15 participants



These discussions yielded two important conclusions: First, once participants understood the process, they were willing to regard it as self-validating in a way they likely would not have done for an ordinary consultation processes. Second, despite some concerns over the Condo Office and the proposed funding model, participants were strongly in favour of something like the model proposed by the expert panel.

The conclusion on self-validation was not something we were testing for. Indeed, it caught us by surprise. When we opened the first roundtable, we told participants the Q&A was their chance to discuss the recommendations in the *Solutions Report*. To respond to questions, an expert was present who had chaired one of the stage two working groups and served on the expert panel.

People began asking many of the same questions, and making the same arguments, that we had heard in the stage one town hall sessions, taking the discussion back to square one. The expert was left scrambling to explain in a half hour all the work that had been done over the last 14 months to arrive at the recommendations, an impossible task. It was nearly impossible to return the discussion to a reflective assessment of the Condo Office.

Following the session, our team debriefed and quickly concluded that our mistake had been to invite the participants to discuss *any* of the recommendations in the report. This was too open-ended. It also broke a basic rule of the process that had been respected until then: once a stage has been completed, the process moves on. In practice, this means that if new people are brought into the process at an advanced stage, the time must be taken to explain to them how the process has unfolded and what their role is at the current stage. They should be assigned a clear task; they, in turn, must agree to the task and try to build on the work of earlier stages. They cannot simply overturn all previous work. But would our roundtable participants accept this approach at such a late stage in the process?

At the beginning of the second roundtable, we explained the process in detail and tried to impress on the participants that a great deal of work had already been done, the process had been inclusive and fair, and that we had not come together to reopen issues that had been settled. We told them that they were free to express such views through written submissions, as most had already done, but that now we were seeking their help on how to proceed with the Condo Office. We were calling on them to help us, for their own benefit and that of all the other owners. Their task was not to reopen the discussion, but to bring it to a conclusion.

While many of these participants would have liked to focus on their own concerns, almost all agreed this would be counterproductive. For the most part, they seemed persuaded that the process was fair and that it was in everyone's interest to keep it moving forward, rather than going back. In the four remaining roundtables, the participants concentrated on the task we had assigned them. They did their work admirably and effectively and provided valuable input. Although there were many different views on how the funding model should work—a few rejected the Condo Office outright—a very substantial majority agreed that the Condo Office was essential and that it should be funded in part through unit fees.



SUMMING UP: LESSONS FROM THE PROCESS

This section draws together some of the key lessons learned over the last 18 months, most of which we think are applicable to public engagement processes generally. We can organize these lessons under a few convenient subheadings:

Political concerns

- **Given the right process, people tend to act to reasonably:** Decision-makers worry that dialogue processes like this one will degenerate into angry name-calling and policy gridlock — or worse, produce bad policy that the government will be expected to implement. None of this happened. While the discussions were sometimes difficult, people on all sides rallied to the challenge to build consensus recommendations. They were respectful, reasonable, and hard-working. Together they produced a comprehensive, balanced, ambitious set of recommendations that the government can now use as a foundation for drafting legislation.
- **Consultation would have further divided the community:** If the government had opted for traditional consultation, the outcome would have been very different. Stakeholders and owners would not have had the opportunity to find compromises and make trade-offs. Instead, the government would have made its own decisions, and then announced them. There would have been winners and losers, which would have further divided the community and created a tense and politically charged environment around the legislation.
- **Having a real say does not mean telling others what to do:** While the public engagement process gave owners and stakeholders a real say, it did not allow them to force solutions on government or each other. The participants worked together to resolve issues and assess options. Everyone, including government, was expected to be forthright about their interests and to resolve differences through dialogue and compromise.
- **Strong political leadership is essential:** Following a cabinet shuffle in early 2013, we found ourselves with a new Minister just as we were preparing to launch stage two. This could have been a serious disruption in the process. Fortunately, the new Minister, Tracy MacCharles, and her staff were extremely supportive of the process, as had been her predecessor, Margaret Best. At the fourth residents' panel, the new Minister told panelists that if the participants in the process were able to reach agreement on reasonable solutions, the government would act on them. This kind of political support was vital to success. The participants needed to know that the political level was fully behind the process.

- **Public engagement tempers partisan politics:** For the most part, the opposition parties had little to say about the process or the reports. It is difficult to criticize a process that brings the community together to solve issues. Doing so would amount to attacking the public, which no sensible politician wants to do, especially since the participants succeeded in reaching a high level of agreement. It also means the bill is likely to make rapid progress through the legislature.

Role of government officials

- Officials may be observers and advisors or full participants. In this process, most of the issues were about how owners should govern and manage their condo communities. As a result, we felt it was best for government officials to act mainly as observers and advisors. However, in other public engagement processes, such as the poverty reduction and sport policy processes mentioned in Footnote 1, government officials were at the table as stakeholders in the discussions. Which role government should play depends on the issues, but either way it must resist the temptation to “manage” the process. If officials are present as observers, they should state the government’s concerns clearly and provide candid advice when asked or required. If they are present as stakeholders at the table, they should be subject to all the same rules, expectations, and normal courtesies as the other participants.

Role of the facilitator

- **The facilitator(s) plays a critical role in the process:** He/she is responsible for ensuring that all participants feel they have a safe and comfortable space to speak, that they have some control over the process, and that they feel a sense of responsibility for and ownership of the outcomes. The facilitator ensures that:
 - Meetings follow the agenda, everyone has a turn to speak, and dialogue moves toward a conclusion;
 - Participants fully understand the process and the rules, treat one another with respect, and disagreements are resolved through dialogue, compromise, and consensus; and
 - Participants work together as a team, rather than competing with one another; learn to speak for broad interests, rather than their specific organizations or personal views; and are challenged to reflect on their own views and to entertain new ones.

Selecting participants

- **Inclusiveness is essential.** The process must be inclusive. However, identifying interests, and the right participants to speak for them, can be difficult. It is not always clear where the boundaries of a community lie, who is included, which interests require representation, and who is best positioned to provide it. Sometimes a rigorous selection process can be used, as in the residents' panel, but this is not always possible or practical. When it came to the stakeholder Roundtables or the working groups, for example, we had to rely mainly on common sense and good planning. Using interviews to help answer some of the questions above was extremely helpful. It allowed us to engage the community in the task of helping to define key interests and recruit members, thus increasing the legitimacy of the choices.
- **The number of participants varies with the stream:** Our process stretched over 18 months, and had three stages and nine dialogue streams. Some of these streams, such as the online submissions, easily accommodated large numbers of people, while others, such as the roundtables, had to remain relatively small to ensure productive dialogue could take place. For the most part, the key to success is balanced representation, not numbers. Having many participants in a process can be desirable, but it is not a guarantee of legitimacy or success.
- **Continuity helps:** In a complex process like this one, it is important to ensure continuity as the dialogue progresses. We used some of the same people in more than one stage, while also recruiting new people to provide fresh perspectives, thereby balancing continuity and diversity.

Planning and managing the process

- **Have clear objectives and roles for every stream:** At every stage and for every dialogue stream, objectives should be clear, as should the roles of the participants. If people aren't sure what is expected of them, they will begin to discuss their particular concerns, which may not contribute to the task at hand.
- **Explain the process and rules:** Bringing people into the process to play specific roles at various stages can be difficult. They must be clear on how their role fits into the project as a whole and feel confident that the work they are being asked to build on has a solid foundation. Taking the time to fully explain the process is essential.

- **Remain focused but flexible:** Processes like this are complex and the circumstances around them may change quickly. While it is important to keep participants focused on the task at hand, it is also important to remain flexible--as we saw with the information sessions—and, where required, adjust the process to deal with new or unforeseen circumstances.
- **Keep moving the process forward:** Being flexible has its limits. Participants should not be allowed to return to earlier stages in the process and undo previous work without a compelling reason.

Timelines, resources and tools

- **Timelines:** Our process took 18 months. As a rule of thumb, this should be a maximum. Participants need to see progress and those who participated in earlier phases need to see that their contribution is contributing to a meaningful outcome. The longer the process goes on, the greater the risk of it becoming scattered, bogged down, or of earlier decisions getting lost along the way. After 18 months, there is a high risk of losing focus, momentum, and legitimacy.
- **Resources and supports:** We've noted and applauded the remarkable efforts of our stage two participants. This shows that when participants believe in the process, they are willing to go to considerable lengths to do their part. Nevertheless, we should be careful not to expect too much of participants. A strong process should provide appropriate organizational, note-taking, and other supports.
- **Collaborative Tools:** The working groups in stage two used Google Docs as a collaborative tool for drafting, sharing and commenting on their reports. This proved to be extremely valuable. Team members had access to the documents 24/7 and were able to leave messages and comments for one another at their leisure. Where appropriate, participants should be encouraged to experiment with collaborative tools, as they can make difficult tasks much more manageable.
- **ONCONDO:** This tool was simple, but invaluable. The feedback we received on the two reports validated the work and the process. ONCONDO also greatly enhanced the legitimacy of the process. When people complained about not being able to participate in the various events, we were able to point to ONCONDO and note that it was open to any and all participants. .

- **Social media:** In the future, we expect social media to play a much greater role in processes like this one. Social media could give the processes a much greater reach, so that one would be able to engage hundreds, perhaps thousands, of people in defining issues and finding solutions.

A new era of open government?

At the beginning of this study, we mentioned several other pilot projects that were also part of the Public Engagement Project. Many of the lessons above echo the learnings from those projects. The bigger lesson is that public engagement and collaboration are applicable to all kinds of policy issues, from social policy to service delivery. We hope the Government of Ontario will also draw on this lesson and apply the learning from its experience with condo regulations to a range of other areas. There have been encouraging signs that this might happen.

In October of 2013, the government created a nine-member panel to provide recommendations on Open Government. Open Dialogue was a key focus of the project. In launching the panel, the government stated its belief that Open Dialogue is a critical condition of better policymaking—partly based on the success of the Condo project. The panel, which was chaired by Don Lenihan, submitted its report in late February 2014, titled: [*Open by Default: A New Way Forward for Ontario*](#).

On June 12, 2014, Ontario elected a new government. In the 2014 Budget, the government committed to introducing legislation to “...take steps to update and improve the Condominium Act, to address the needs of the condominium community and support the long-term sustainability of condominium living.” We hope the government introduces condo reform soon and that we continue to have the opportunity to collaborate on future Open Government initiatives.

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