DISPUTE RESOLUTION WORKING GROUP
Major Categories of Condo Disputes and Key to DR Issue Forms

1. Information (Form DR1)

2. Condo vs. Developer Disputes (Form DR2)

- Turnover - s.43
- First year financials - s.75, and reserve fund - s.80(5)
- False/misleading/missing statements - s.133
- Oppression - s.135
- Compliance - s.134
- Shared facilities

3. Shared Facilities Disputes (often Condo vs. Condo) -- (Form DR3)

- Shared facilities (or vs. non-condo party to SF agreement)
- Easements
- Oppression s.135

4. Condo vs. Manager Disputes (Form DR4)

- Performance issues
- On-site personnel issues
- Contract/fee issues
- Delivery of records to successor

5. Condo vs. Owner Disputes

5A. -- Small items (Forms DR5A and DR5A-1)

- Access to records - s.55
- Validity/Reasonableness of chargebacks
- Validity of proxies and entitlement to vote

5B. -- Enforcement cases (Condo vs. Owner or Owner vs. Condo)
(Forms 5B, 5B-1, 5B-2 and 5B-3)

- Enforcement of declaration, by-law and rules (people, pets, parking)
- Violations of the Act alone
- Corporation's failure to enforce against other occupants
- Owners' failure to register leases (s.83)
- Tenants' breach of Act, dec/by-laws/rules (s.119)
- Issues re Requisitions/Meetings/Proxies/Elections -- ss. 28-34, 45-54)
- Breach of directors' duties -- ss. 35-41
- Oppression -- s.135
- Lien enforcement -- s.85

6. Condo vs. Tenant Disputes (Form DR6)

- Where owner fails to secure tenants' compliance with Act/Dec/BLs/rules
- Tenants' failure to obey attornment notice - s.134(4)(b)

7. Costs Recovery (Form DR7)

WORKING GROUP ISSUE FORM - #DR1

Working Group:	DISPUTE RESOLUTION
Issue/Problem Statement:	Issue Guide item B(a): **Access to information about the Act, governing documents, and applicable DR processes**

Stage One Findings (summary):

Misunderstanding and misinformation as to the roles, rights and obligations of the various stakeholders, including owners, boards, tenants and declarants, is a common source of disputes and reason for the escalation of disputes. Better access to high-quality information will invariably help reduce the number of disputes arising and facilitate quicker, easier resolution of disputes.

Context for Discussion:

Desired Outcome	- Increase access to information and provide high-quality, useful info/tools - Dispute prevention - Create a well-known, trusted, neutral source for this information - Tools for public, new owners, current owners, potential owners... to understand the information ("rights and responsibilities of condo life") - Clarity of process for owners, Boards, managers - Specify early dispute resolution - Create an authoritative condo registry to allow for keeping statistics and central information about condo corporations to help resale purchasers conduct due diligence and provide the world with up-to-date contact information as intended by current section 77 of the Condo Act but is woefully lacking in practice.. - Promote better education for condo owners, directors and managers. - Better informed consumers, unit owners, tenants, directors and managers.
Current Status	Information is currently provided by a variety of sources: - Ministry of Consumer Services ("MCS") condo info website and hotline - of 2000 calls/inquiries per year, 90% are info requests. - Private Blogs, websites, info and services - Industry associations/organization publications - Legal Services and paralegal services - No central registry of condo corporations exists, making it difficult to gather

	statistics and to locate individual condo corporations (or their managers or boards).
Guiding Principles	Overreaching Principles of the "ideal" information source: 1. Economical to operate 2. Speedy 3. Fair 4. Conspicuous, easy to locate 5. Impartial, neutral, trusted 6. Uniform/consistent 7. Useful and practical and CRYSTAL CLEAR 8. Accessible in different formats (online, phone, in person)
Considerations	- Need for centralized source of info which is neutral and authoritative - Must be effective; redress power imbalances - Determine what info belongs on government website and what is best left to lawyers, blogs, advocate groups, self-help, etc. - Technological design - ability to channel through tick boxes to guide consumer to relevant info - Must be inexpensive to maintain and deliver - Possibility of creating 'streams' of info and tick boxes online for owners and others to obtain timely information - Must be carefully prepared so as to be usable and effective.
Long-Term Implications	<u>Cost/Funding Model</u> - If static info vs. helpline or advice by personnel - Initial upstart costs to design update website - Better informed stakeholders will result in greater harmony, fewer disputes and reduced costs over time.

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1.	The info be created, hosted and distributed by Government (MCS)	- Trusted, authoritative source. - Many physical locations. - Could be funded through levy on condo corporations	- Limits on "advice" that information officers can provide. - Depth of info provided may be too little. - Potential added cost to tax payers
2.	The info be created and hosted/distributed by a	- Could become a trusted, authoritative source.	- Could take time to become well-known

	government-created Bureau or Office funded by condo corporations. This entity would create the condo registry.	- Greater specificity, complexity of information. - Greater flexibility in giving advice, playing role in condo conflicts. - Could be funded through levy on condo corporations	and trusted. - Potential added cost to condo owners and corporations
3.	The info be created and hosted/distributed by the DAA that regulates condo managers.	- Allows creation, dissemination of "best practices" by managers. - Can clarify the role of managers. - Explain how complaints vs. managers can proceed. - Would be paid by DAA and its members/licensees.	- Scope of info should/could be limited to management issues and complaints vs. condo managers.
4.	The info be created, hosted, distributed by existing groups like CCI, ACMO and others.	- No cost to public. - Some orgs have long track records and established pool of condo experts.	- Perception of bias. - No oversight or control by govt.
5.	Some combination of options 1 and/or 2, and 3.	- The more sources of good info, the better.	- Possibility of diluting the existing info or creating uncertainty as to which source is most authoritative.

Recommendation:	**Option #2:** A "condo bureau/office" should take the lead in creating and delivering high-quality information to condo stakeholders. Any DAA created to license and regulate condo managers must also play a key (but separate) role in disseminating information as relates to areas under the DAA's jurisdiction. Private sector players and industry groups and associations will always play a role in creating and delivering information.
Recommendation Rationale:	A condo office would be: - Trusted - Self-funding

	- Offer greater flexibility and objectivity in providing information - Creation of condo registry would be needed to implement the funding model by collecting levy from each condo corporation. - The registry would provide authoritative statistics on condominiums and units, - The registry (populated by regular periodic information filings by condo corporations) would provide the necessary public information contemplated by section 77 and eliminate the need for registering s.108 "change of address notifications" on title to units, and remove that cost. The Condo Office must be separate from the DAA that licenses and regulates condo managers. The public perception of a single body that administers both functions will be viewed with suspicion and will likely give rise to perceived or actual disputes over funding.
Notes:	In creating any information intended to assist the public, close regard must be had to the Macfarlane Report (May 2013) on self-represented litigants, particularly as to the vital considerations needed in creating online information about legal rights and processes. Whether any "advice" is given in addition to detailed but "general" information will depend largely on the resources of the office and the quality and experience of the people providing the services. That said, giving advice poses inevitable difficulties and the serious prospect of parties relying on advice to their detriment, particularly in response to inaccurate or incomplete information. Given the relatively simple process of early neutral evaluation that is being proposed, parties wishing to test their positions will have an accessible opportunity to do so.

WORKING GROUP ISSUE FORM - #DR2

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**CONDO vs. DECLARANT DISPUTES** (incl. declarant vs. condo)

Stage One Findings (summary):

The Stage One Findings Report did not distinguish between the various types of disputes and did not address disputes between condo corporations and declarants. Given the inescapable conclusion that different mechanisms are needed for the various types of disputes, this distinction is vital to exploring and devising appropriate DR mechanisms for the different types of disputes.

Context for Discussion:

Desired Outcome	1. Consumer protection - reduce imbalances against condos 2. Speedier, cheaper resolution 3. Decisions in complex cases to be made by an expert rather than a generalist 4. Reduce reliance on courts where applicable 5. Preservation of long-term relationships
Current Status	1. Clause 132(2)(1) of the Act states that agreements between condos and declarants are subject to mediation and arbitration (as is the case with Shared Facilities ("SF") disputes -- see issue Form DR3). 2. Subsection 132(3) provides that disagreements over first-year budgets (s.75) are subject to mediation and arbitration. 3. Section 43 turnover disputes are handled by applications to the court. 4. Subsection 133(2) allows condos to apply to court for damages arising from declarant omitting info or giving misleading info. 5. S.135 allows a condo or declarant to apply for an oppression remedy. 6. S.134 allows a condo or declarant to apply for a compliance order.

	7. Construction deficiency items under the Tarion warranty are typically handled through the Tarion conciliation process. 8. Claims for construction deficiencies not covered by the Tarion warranty (and items that are covered under that warranty but are withdrawn from the Tarion process by the corporation) are dealt with as a lawsuit in court. 9. Claims for other items (including contract items per s.23) are typically dealt with through lawsuits. 10. S. 113 allows mutual use agreements to be amended or terminated by a court on application made within 12 months of turnover. Problem: Unless specified in an agreement, no prescribed procedure exists to handle the mediation and arbitration processes, leading to procedural quagmires and delays. The process and timelines for mediation and arbitration should be set out in the Act or a regulation.
Guiding Principles	- In disputes between Condos and their Declarants - parties are 'sophisticated' because they have access to counsel, but condos are disadvantaged in several respects, primarily by having a board of laypeople with multiple complex issues and short deadlines in the 1st year following turnover. Skill/training/allegiance of the condo manager is also a perceived problem in assisting turnover boards. - Both sides in condo vs. declarant disputes usually have legal representation, but many boards do not engage counsel soon enough, resulting in poor choices, missed limitation periods and worse. - Shared Facility disputes between condos and declarants (where the declarant retains ownership of neighbouring land/facilities) are governed by contract and usually contain an ADR clause (typically arbitration, though post-2001 agreement specify mediation per s.132). - Many disputes currently subject to mediation are being settled at mediation. - Arbitration often requires a party to go to court to appoint the arbitrator and then to enforce the award. - Arbitration allows the parties to pick a skilled individual to decide the case whereas going to court for specialized disputes is risky, given that the judge will often not be an expert in condo law. - Court applications for turnover issues generally work well, are simple, quick

	and economical. - Courts are the best bet to balance consumer protection of unit owners while respecting commercial realities. - Dollar figures in these disputes are typically sufficiently large to warrant a formal process (court, tribunal, arbitrator, etc.).
Considerations	- Can Act build in 'carrots' and 'sticks' to redress economic imbalance and impose penalties that could redress "bad behaviour"? E.g., Could there be penalties for delay in paying first year budget shortfall after 30 days of demand? - Condo corporations should be represented by counsel in these disputes, particularly in very early years of the condominium. - For disputes between Condo and Declarant, Act could stipulate that, subject to agreement otherwise, parties can choose mediation or arbitration (and not have obligation for both - but have option for both) then Act must provide a default provision where parties do not consent to a process. - Actions taken (or not taken) by turnover boards have a major effect on the condo's standing, status and finances for years to come.
Long-Term Implications	- Condo corporations that fail to exercise their rights prudently and effectively in the first two years of their existence suffer serious and lasting damage for many years to come.

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1.	Status quo, but create a default procedural guide for conduct of mediation and arbitration where no such process exists. Employ *Commercial Mediation Act, 2010.*	Requires little change to the current handling of these disputes but improves their handling. - CMA 2010 allows easier conduct, uniform ground rules and fast, simple enforcement of mediated settlements.	- Wide variety of DR mechanisms for different disputes creates confusion among laypeople (but not a problem for condos represented by lawyers).

2.	Remove some/all these disputes from court and make mediation and/or arbitration mandatory.	- Greater uniformity of dispute resolution mechanisms gives appearance of simplicity.	- Costs of handling some disputes will increase. - Courts are better-positioned to handle certain cases. On the plus side: Arbitration can often yield a quicker result with an expert in condo law. Parties are also able to tailor the process to their needs - and do not necessarily have to replicate court proceedings.
3.	Remove some of the disputes currently subject to mediation and send them to court instead ***(be sure to see Issue Form DR3 on SF Disputes)***	- Greater uniformity of dispute resolution mechanisms gives appearance of simplicity.	- Parties deprived of option to use expert adjudicators for specialized items like Shared Facilities and 1st year budgets. - Additional strain on overtaxed and under-resourced courts. - Most SF agreements are expressly intended to be subject to arbitration.
4.	Use Standardized DR process for defined disputes (Phil's Chart)		- Declarant disputes would consume inordinately more resources than condo & owner disputes. -Might inadvertently encourage boards to self-represent in extremely important, complex disputes.
5.	Create a "condo tribunal" to handle all such disputes.	- Perception of easier, more cost-effective handling of disputes.	- Cost, infrastructure would require a user fee and funding system to

			defray cost - Tribunals would need sufficient power to grant necessary remedies like injunctions, vesting orders, declaratory relief. - Tribunal should not be a "second-rate court". - Declarant disputes would consume inordinately more resources than condo & owner disputes.

Recommendation:	Option #1. Maintain the existing variety of options for the various disputes, but create a 'default process' for handling mediation and arbitration. We also suggest making mediation of these disputes subject to *Commercial Mediation Act, 2010.*
Recommendation Rationale:	1. The current treatment of these disputes is complex by any measure, but it offers the right blend of effective tools for the various sorts of problems. This blend should not be sacrificed for the sake of expediency or simplicity. 2. Parties always have the option to mediate and arbitrate their disputes if they wish. Lawsuits in Toronto, Windsor and Ottawa are generally subject to mandatory mediation where many cases settle at an appropriate stage (e.g., after discoveries). 3. While removing s.75 budget disputes from mediation may seem prudent, there is value in providing an opportunity for newly-turned over condos and their declarants to sit down and resolve not only the budget dispute, but other disputes existing between them. Multiple disputes can be and often are resolved as part of one process. 4. Processes should arguably be simpler, but not so simple as to lull directors into a false sense of security such that they would be led to dispense with the need to get legal advice, a bad choice that leads to catastrophe and serious prejudice to corporation and unit owners for years to come.

	5. CMA 2010 provides useful ground rules and tools that are gaining universal acceptance in practice which help reduce uncertainty and cost, and facilitate easier, quicker enforcement of settlements.

WORKING GROUP ISSUE FORM - #DR3

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**SHARED FACILITIES ("SF") DISPUTES** (usually condo vs. condo, or condo vs. non-condo SF partners, including declarant)

Stage One Findings (summary):

The Stage One Findings Report did not distinguish between the various types of disputes and did not deal with SF disputes. Given the inescapable conclusion that different mechanisms are needed for the various types of disputes, this distinction is vital to exploring and devising appropriate DR mechanisms for the different types of disputes.

Context for Discussion:

Desired Outcome	Provide a timely, effective, economical and accessible process for resolution for SF disputes. Encourage early intervention, before positions become entrenched. Preservation of the relationship - condos or other parties using/operating shared facilities will be neighbours forever. Provide relief to condo corporations that share facilities or easements with other entities in the absence of a shared facilities agreement, where declarant fails to establish an SF Agreement.
Current Status	1. Clause 132(2)(2) of the Act states that agreements between two or more condos are subject to mediation and arbitration. 2. Most shared facilities agreements (even those pre-dating the Condo Act 1998) mandate arbitration of disputes but do not always provide a clear process for conducting the arbitration. 3. Section 135 allows parties to a shared facilities agreement to apply for an oppression remedy. 4. Section 134 allows condos to apply for a compliance order against a sister

	condo over breach of shared facilities/cost-sharing agreement. 5. Section 113 allows mutual use agreements to be amended or terminated by a court on application made within 12 months of turnover. 6. Some condos are thrust by their declarants into a shared facilities scenario without any kind of shared facilities agreement or cost-sharing framework in place.
Guiding Principles	Category of disputes between condo to condo: - should include sister buildings/corporations - should include mixed use condo residential and commercial buildings or projects - should include condo which have shared facility agreements or which do not have shared facility agreements but should! In condo vs. condo disputes parties are "sophisticated" and often have legal representation. Some of these disputes are governed by contract and may contain ADR clauses (for arbitration), but pre-2001 SF agreements only prescribe arbitration (and consequently have no procedure for mediation and maybe not even for arbitration) - such cases would require a court application to appoint the arbitrator.
Considerations	1. Mediation and arbitration work well for SF disputes. 2. SF disputes do not belong in court except in situations of danger where an element of urgency applies. 3. Arbitrators have the power to give an oppression remedy. 4. Parties thrust into a SF situation without an SF Agreement are doomed to resort to litigation unless the Act mandates mediation and arbitration, which might lead towards a lasting agreement or framework being struck.
Long-Term Implications	Reduced reliance on courts. Encourages parties to select or appoint expert decision-makers, decreasing the odds of bad decisions and need for appeals. Help preserve long-term relationships.

Options and Recommendation:

	Options:	Pros:	Cons:
1.	Status quo (where there is an agreement), but provide guidelines for processes of mediation and/or arbitration, and make mediation of SF disputes subject to CMA 2010.	- Places priority on preserving relationships. - Reduces need for court intervention. - Default process and CMA 2010 creates certainty, predictability and uniform ground rules and enhanced enforcement of mediated settlements	- None come to mind.
2	Condo tribunal	- Eliminates cost of the arbitrator.	- SF disputes are too big, complex and costly, causing inordinately large consumption of resources intended for condo & owner disputes. - Parties lose control over the process.
3	To capture those condos without SF agreements in place, mandate condo SF disputes or easements (even with a non-condo party) to be subject to mediation and arbitration in accordance with the default process.	- Reduces court intervention. - Fosters better neighbour relationship. - Corrects injustices created by sloppy declarant.	- Some non-condo parties might unwillingly be brought into a mediation/arbitration regime.
4	Use standardized DR Process (Phil's Chart)	Potential access to Quick Decision Maker and Early Neutral Evaluation at substantially reduced cost.	- Parties lose control of the process. - Assistance of DRO might not be helpful in all cases. Not appropriate to clog the Condo Office with SF disputes.

Recommendation:	**Options 1 and 3 are recommended.** - Shared Facilities Disputes should remain subject to mediation and arbitration, **including SF or easement scenarios where an agreement does not exist.** - Mediation of SF disputes should be made subject to the Commercial Mediation Act, 2010. - May be value in clarifying the powers of an arbitrator, in terms of whether an arbitrator can help parties establish a cost-sharing framework where no agreement exists. -section 113 (3) be amended to include 'or,' but the s. 113 process remain available. Parties may still proceed under s. 113 without mediation/arbitration. - The opportunity for a corporation to apply for a s.135 oppression remedy should remain available, but be made subject to the pre-condition that mediation and arbitration be exhausted first, as presently exists s.134 compliance orders. We would clarify, however, that this precondition should not prevent a corporation from applying for a compliance order where a dangerous condition exists (s.117) that requires urgent attention.
Recommendation Rationale:	Mediation and arbitration work fairly well for SF disputes. Parties to those disputes typically have counsel and ample resources to handle the dispute in the way they deem fit. Given the importance of the issues and the large dollar figures usually involved, these cases should stay out of court and out of the Condo Office, so as to reserve the Condo Office facilities for disputes with unit owners. Even the SF agreements that pre-date the Condo Act 1998 mandate arbitration as the way in which to solve their disputes. While only a limited number of condos will be assisted by option 3, we consider it prudent and desirable to establish a system to capture and engraft a DR mechanism to assist those condos that were, by the neglect of their developers, not provided with a proper contractual framework to address SF issues with its sisters.

Notes:	We wondered (but did not answer) whether an arbitrator should be given the power to impose an agreement or cost-sharing formula on parties with no SF agreement in place and, further, whether an arbitrator should be empowered to impose joint by-laws or rules to govern the use of and maintenance of shared facilities as per s.59 on two or more condo corporations where one party does not agree. CONSUMER PROTECTION: We think that section 113(3) (a)-(b), being the criteria where a court can set aside a shared facilities agreement, should be separated by 'or' instead of 'and'. This would allow an unfair SF agreement to be amended by a court in the first year following turnover, even if it was disclosed to purchasers. This is, in our estimation, a major failing of the Act and should be specifically addressed.

WORKING GROUP ISSUE FORM - #DR4

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**CONDO vs. MANAGER DISPUTES**

Stage One Findings (summary):

The Stage One Findings Report did not distinguish between the various types of disputes. Given the inescapable conclusion that different mechanisms are needed for the various types of disputes, this distinction is vital to exploring and devising appropriate DR mechanisms for the different types of disputes.

Context for Discussion:

Desired Outcome	1. Timeliness of process 2. Reflect commercial reality. 3. Choice of appropriate process for the type of dispute. 4. Early intervention 5. Create speedy, inexpensive new process to help condos obtain property or records wrongfully withheld by a departing or former property manager. 6. Determine the proper role of potential new DAA to regulate condo management profession. Can/should this DAA play a role in disputes between condo corp. and management?
Current Status	Mediation and Arbitration are mandated by clause 132(2)(4) of the Act for disputes related to property management agreements but, in reality, are seldom used in practice. Most disputes between condos and property managers end with the condo terminating the management contract. The only remaining issues are usually payment of fees per contract, delivery of records and, in rare cases, damages arising from negligence of the manager (which would presumably be covered/defended by the manager's insurer). Another current reality is that the individual condo manager or the management firm are often wrongly named as defendants in complaints and suits brought by unit owners whose real complaint is with the condo

	corporation. In such cases where the manager acts solely as the corporation's agent (and since managers are typically entitled by the management contract to be defended/indemnified by the condo) needless confusion, cost, procedural wrangling and friction between the manager and board invariably arise from such situations and should be addressed as part of this review. This can be addressed by an information piece - on a government website and DAA website explaining the role of management.
Guiding Principles	Disputes between condos and managers may be governed by employment law (in case of employed managers) and by service contracts (in the case of contracted individuals or firms). Management agreements may already contain ADR clauses that govern disputes and such clauses can easily be inserted where desired. It is desirable to clarify the fact that the managers are typically not a proper party to a claim or complaint made by unit owners by providing such info on government and DAA websites.
Considerations	Some of the current disputes between condo and management may be moot if condo managers are licensed and there is a delegated administrative authority ("DAA") to deal with these matters. Some disputes, such claims for damages arising from negligence (which claims are typically covered/defended by the manager's insurer) are best left to be handled as a lawsuit in court, so as not to prejudice the insurer's rights and position and to allow the parties the right to prosecute and defend such claims as they deem fit. Most disputes between condos and managers are resolved by the relationship ending and the contract between them being terminated and the parties move on, usually with no remaining dispute and no relationship to preserve. The value of most disputes between condos and managers are usually 2-3 months' worth of the management fee, which may often be much less than $25,000 (Small Claims Court jurisdiction). Imposing mediation and arbitration would often doom the parties to expending far more money than the dispute is worth. Aside from unpaid management fees, the other typical dispute between managers and condo after parting ways relates to delivery of the condo's records by the former manager. At present, condo corporations have no effective, quick, simple and inexpensive mechanism (under the Condo Act or

	even the Rules of Civil Procedure) to compel delivery of property and records being wrongly withheld by a manager. Given that the records of a condo corporation are the property of the condo corporation and are essential for its continued operation, there is absolutely no defence to such a demand and a rapid adjudicated solution is vital. As for condo managers being wrongly included in suits/claims/complaints by unit owners, the common law of agency would ordinarily allow the manager to extricate itself from the case where the real complaint is between the unit owner and the condo corporation.
Long-Term Implications	- Requiring the DAA to handle certain disputes and complaints may require an increase in its funding, which might ultimately increase the cost of management services. Given the enhanced professionalism and resulting value and reduction in problems, losses and disputes, such added cost may be well worthwhile.

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1	Status quo -- Management agreements to remain subject to mediation and/or arbitration. Need timelines and guidelines	- Notion of diverting cases from courts.	- Mediation/arbitration is underutilized for these disputes. - At present, too slow a process and costly, unpredictable and ineffective for delivery of detained records. - Inappropriate for larger claims of negligence that may be covered/defended by insurance.
2	Eliminate the requirement that disputes over management agreements be subject to mediation/arbitration	- Eliminate confusion as to appropriate DR process. - Align more clearly with actual practice and commercial realities.	- Increased burden on the courts. - Managers claiming unpaid fees will often face counterclaim for negligence or breach of contract.
3.	For recovery of records wrongly withheld by managers, amend section 43,	-Clear, expedited process and simple list of documents/records to	- Costly, perhaps not quick enough. - No penalty, reprimand to

	55 or 134 to permit application by condo against former manager (especially if no DAA). Usually urgent situations requiring expedited court appearance.	be provided.	repeat offenders, except costs.
4.	Empower the DAA overseeing condo manager regulation to order delivery of records and impose fines as part of its ethics/discipline process. DAA could also offer a mediation service where the manager and condominium wish to participate in mediation over performance, personnel and fee issues.	a. Expeditious, low-cost solution for the condo. b. No court involvement in most instances. c. Decisions by regulator will likely be consistent, well-informed, respected. d. Will enhance profile, reputation and credibility of the regulator. e. Potential license revocation provides strong disincentive for manager to offend applicable codes related to records and encourages swift obedience with ruling. f. Other professions offer free mediation services for fee disputes.	- Unclear whether it is proper for a regulator to decide disputes between a licensee and the licensee's client.

Recommendation:	We recommend options 2, 3 and 4 together. Option 2: Agreements for the management of condo property should be removed as one of the agreements that are deemed to contain mandatory submission to mediation and arbitration. Option 3: Create a new and improved court application process for urgent delivery of records. Corporations may choose between using

	this court process or the DAA model if available. Option 4: Create a fast-tracked process to the DAA regulating managers to require delivery of a condominium's records. Failing which a new and improved process be created to obtain an expedited court order to acquire records.
Recommendation Rationale:	Mediation and arbitration offer little value to the parties, seeing as how their relationship is typically ended by the time a dispute moves into a formal DR process. The cost and effort of mediation and arbitration is typically greater than any potential reward or positive outcome. We note that mediation is typically mandatory in most litigation in Superior Court and, in fact, most cases will settle at that stage. Removing condo vs. manager disputes from the Condo Act regime makes it possible to introduce certain of those disputes to a process managed by the DAA and which could be mandated by the statute creating the DAA and imposing licensing and regulation on the condo manager profession.
Notes:	CONDO MANAGERS: For standardizing contracts, consider a time limit termination clause (e.g. 60 days' notice or more). As for the concept of managers being wrongly included in complaints/suits brought by unit owners: Better education through the DAA as to the role of the manager may help reduce the number of suits/claims/complaints against managers by owners. Additionally, the complaint process instituted by the DAA should be structured with plenty of front-end information that complaints against managers will be dismissed where it appears that the owner's complaint is more properly made against the condo corporation and not the manager.

WORKING GROUP ISSUE FORM- #DR5A

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**OWNER v. CONDO -- <u>FOR SMALL (but important) ITEMS: Records, chargebacks, proxies, requisitions and owners' entitlement to vote.</u>**

Stage One Findings (summary):

Not all disputes rest on misunderstandings. Genuine disagreements exist and, when they occur, the Condominium Act prescribes mediation and arbitration as the tools for dealing with them. It also defines parameters for the process. Unfortunately, it is widely agreed that in its present form the system does not work well. These processes are often slow and costly (e.g. legal fees), with no assurance of cost recovery, even when success is the result.

Context for Discussion:

Desired Outcome	After receiving information and early neutral evaluation if desired, a unit owner seeking a ruling on a simple item needs a simple, inexpensive process to obtain a quick decision. A simple, inexpensive process will redress the issue of power imbalance.
Current Status	Owners may bring an action in small claims court under s. 55 for an order compelling delivery of records and payment of a $500 fine. The process is notoriously slow and unsatisfactory, prompting most owners to find alternative means. The Act currently provides no specific means for owners to obtain decisions on items such as chargebacks, requisitions and proxies. Small chargebacks are often dealt with in small claims court (or in Superior Court once the case has escalated to a lien enforcement action), where the value of the chargeback is a tiny fraction of the cost of the proceedings. Proxies are ordinarily ruled upon by the chairperson of a meeting, but parties sometimes apply to Superior Court after the meeting for rulings on proxies and for the outcome of elections. For requisitions, the unit owners may call and hold their own meeting if the board fails to call and hold a meeting within 35 days of receiving the

	requisition. A good board would hold the meeting even if the requisition did not strictly meet the legal requirements. Bad boards sometimes take the position that the requisition is invalid, refuse to hold the meeting and then seek a court injunction to restrain the owners from calling and holding their own meeting, arguing that the requisition is invalid. Allowing owners the opportunity to seek a ruling as to whether their requisition is valid before calling and holding their own meeting may serve a useful purpose.
Guiding Principles	- Self-represented parties require an extremely simple DR system. - Quick, accessible to owners. - Mediation may not be helpful in these scenarios. Quick adjudication is required. - To consider the power imbalance of corporation vs. owners. - Added clarity to other portions of the Act will sharply reduce the number of disputes, but to create effective processes for those that require further action. - Even if there is a minor technical defect in a requisition for a meeting, a good board will convene the meeting anyhow, so as to provide a forum for the owners to voice their concerns. That said a board ought not to hold a meeting where the requisition is fundamentally flawed or invalid. - Recognizing that some owners will make frequent claims for rulings with the board and would make frequent claims, any process created must not hinder or delay proper function of condo corporations.
Considerations	- Who pays to create/maintain the infrastructure? - Will the clarity being devised by Governance WG reduce the volume of disputes? - Will the delivery of better information and tools assist unit owners, managers and boards in better understanding the rights and obligations of the various stakeholders (owners, directors, manager) and thereby reduce the volume of disputes? - Will improved education and licensing of condo managers have a salutary effect of reducing instances of managers and boards acting badly, and thereby reduce the volume of disputes?

Options and Recommendation:

	Options:	Pros:	Cons:
1.	Quick Decision maker (like Employment Standards Officers); summary process (phone/ interview/online), with or without appeals, may be an OPS employee, statutory power of decision, typical protections. (Could be part of MCS, or DAA, or "Condo Office" or free market.)	- Quick decisions; - Summary, informal process.	- No power to award costs against unsuccessful party, but a prescribed penalty could be given (like the $500 fine in s.55 currently.)
2	Tribunal in its various forms (e.g. BC model)	- Expert tribunal could decide defined class of cases.	- Large cost, infrastructure. - Makes little sense unless designed to handle non-condo disputes as well. -Multiple applications by same unsatisfied unit owners would hamper operation of the condo. - Other tribunals (LLTB, HRTO) show long delays.
3.	Status quo - Small Claims Court (section 55);	- Judicial process ("day in court"). - Reasonably simple process.	- Costly, slow. - Generalist, non-expert decision makers.
4.	Application to Superior Court		- This is a step backwards. Slow, extremely costly, extremely unfriendly to unrepresented parties.
5.	Expedited, simplified arbitration, subject to strict procedural guidelines, combined with ODR/Online Arbitration. Could be offered by private sector exclusively, either with or without a "roster" concept.	- Parties can choose their own decision-maker to hear evidence and give quick ruling. - Quick decision-making, summary process, inexpensive; - No large infrastructure or cost. - Greater flexibility for	- If a private player, might not be perceived as entirely neutral, or may not achieve widespread acceptance by unit owners for other reasons. - An ODR option would eliminate the "day in court" but offer greater

		costs recovery, but should be small awards. - ODR option would provide flexibility in scheduling, allowing participation from home/office or after hours. - ODR platforms and technology growing rapidly may quickly become mainstream.	accessibility/flexibility. - Small costs awards against unsuccessful parties might help weed out unmeritorious claims but could be an obstacle for legitimate complaints.

Recommendation:	**Option #1** (see Form 5A-1 for more details on that option), failing which we suggest Option #5 as the runner-up.
Recommendation Rationale:	Though the Quick Decision Maker can rule on proxies, requisitions and entitlement to vote, we deliberately excluded rulings on validity of meetings, votes and elections (which items would reasonably flow from a decision on the foregoing items) on the basis that such rulings relate to serious, fundamentally critical democratic issues that should be reserved to a court. So the QDM's decision would be used as the basis for a court order invalidating a meeting, vote or election, but only a court can assess the totality of the situation and interests of all stakeholders more effectively and give drastic orders as to validity of meetings and votes/elections. The two-stage process, while seemingly inefficient, has value as follows: If a ruling has been given on a requisition, entitlement to vote or proxies, and if that ruling would consequently affect the outcome of a meeting, election or vote, it is likely that the losing party would concede the point and negotiate a truce and resolution rather than be eviscerated by a court. Stated another way, the findings of the first ruling would in most cases eliminate the need for a second step. While it is tempting to include rule enforcement with the "quick" disputes set out above, the sheer volume of rule enforcement items would utterly swamp the infrastructure of a "quick" decision-making process. Further details on the QDM are set out in Form DR5A-1. In the event that option 1 is not selected, then option 5 is the sensible choice.

WORKING GROUP ISSUE FORM- #DR5A-1

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**QUICK DECISION MAKER ("QDM")FOR SMALL ITEMS**

Stage One Findings (summary):

The fourth and final form of dispute resolution is adjudication. As the term suggests, adjudication is when someone outside the parties to the dispute has the authority to make a decision about the case and impose a solution on the parties. At least three different tools for this kind of dispute resolution were proposed and discussed in the various streams.

Context for Discussion:

Desired Outcome	A quick, inexpensive, simple and accessible way in which owners and condo corporations can obtain fast decisions on a limited number of relatively simple but frequently-encountered disputes.
Current Status	There presently is no quick decision maker. Condos and owners must either proceed through the mediation/arbitration process or commence litigation which is costly, complex and slow.
Guiding Principles	- Not all cases require mediation or a terribly formal process -- some just require a quick and dirty decision. - While natural justice and rights of appeal are fundamental, they are subject to the overriding concept of proportionality.
Considerations	Q1. Mandatory - universality or not? A1. Mandatory with single intake process for these disputes Q2. Funding - tax payer funded, paid for as a levy by condo owners (e.g. through monthly fee), user fees A2. Primary funding through user fees and levy on condos, with the option of possible seed / transition funding by govt.

	Q3.Jurisdiction - what issues do they decide on and what relief can they give including injunctive and costs A3a. Can deal with delivery/redaction of records, validity/reasonability of chargebacks (incl. quantum), validity of requisitions, proxies, and owner's entitlement to vote (but not validity of meetings or vote/election results). A3b. Can order delivery of records, rule on redactions, impose prescribed penalties, rule on validity/reasonableness of chargebacks, rule on validity of requisitions, proxies, and owner's entitlement to vote, and order costs of the proceeding on a prescribed scale (with no further recourse for condo to collect "additional actual costs"). Q4. Enforcement of Orders A4a. Costs against owners may be added to their unit's common expenses. Costs against corporations may be enforced by filing order at small claims court. A4b. Non-monetary orders may be enforced as though an order of the court. Q5. Appeal Rights - are there any and what are the limits, where do the appeals go? A5. Appeal rights should be limited to jurisdiction, issues of law, or deal with amounts over $1,500 (or higher). Appeals be heard (or, better yet, read) by appeal officer or a panel of QDMs, excluding the QDM who made the original decision. Note: Greater costs consequences for unsuccessful appeals. Q6. Process - formal vs. informal, using technology, online video etc. A6. Requires standardized claim/dispute form to launch process. Informal summary fact finding, can be without an oral hearing, can be done by approaching one party and then the other, and can be online or phone - quick decision to be rendered, using standardized forms. Q7. What about the new dispute that flows from the result of the original dispute's decision? TBC A7-a. Where a new dispute arises from information contained in records that are delivered pursuant to a QDM's decision, this gives rise to a new dispute to be handled elsewhere. A7-b. Where a dispute arises as to redaction of records ordered to be delivered by a QDM, the matter could come back to the QDM for a final binding decision as to what if any redaction is appropriate. A7-c. Where a QDM rules on validity of requisition, proxies or entitlement to vote and such ruling would likely lead to a change in the outcome of a meeting, vote or election, there QDM may "have words" with the parties as to the consequences of further action should either party elect to proceed.

Options and Recommendation:

	Options:	Pros:	Cons:
1.	Government (Ministry of Consumer Services)	- Would appease public calls for "condo police."	- Bucks the trend of government stepping out of this type of decision-making.
2.	As a division of the DAA created to regulate Condo Managers	Logistically a good choice; reduces redundancy and cost.	- Perception of bias towards managers and boards, although this could be overcome if the DAA is designed creatively. - Funding issues could create conflict.
3.	Condo Office (Controlled by government)	- Greater flexibility as to structure and processes than a government dept.	- Public trust would need to be earned.
4.	Condo Office (Loosely controlled by government)		- Public trust hard to achieve.
5.	Condo Office (Private)		- Public trust even more difficult to achieve.

Recommendation:	Condo Office controlled by government. The QDM should be clothed with the power to make binding decisions (as per SPPA s.19) on certain limited items (namely validity of chargebacks, right to vote, validity of proxies and delivery of records) without right of appeal except for jurisdiction, and for money cases, where the award is over $1,500-$2,000.
Recommendation	A decision-maker housed in an entity outside the close control of government is unlikely to achieve the necessary level of funding,

Rationale:	credibility or appearance of neutrality. - A quick and dirty ruling will be sufficient in most cases and would probably be accepted if the process was considered fair. - It is appropriate to limit rights of appeal where the consequences of the ruling are (from an objective perspective) of little consequence to the parties and where the dollar figures are very low. E.g., appeals from small claims court decisions are not possible unless the value of the case is greater than $1,500 (see CJA, s.31). - QDM is a good venue for deciding issues of chargebacks (usually of under $2,000) summarily. As we note in Form DR5B, the condo lien enforcement process should remain unchanged, but disputes about the validity of chargebacks may be dealt with using the QDM process recommended here. In order to avoid scenarios where unit owners dispute a chargeback in the midst of a condo lien enforcement proceeding (and, indeed, so as to avoid many scenarios where a lien enforcement process is begin to collect a chargeback), we recommend that chargebacks be posted by the corporation only after giving a notice of the item and which requires the owner to dispute the chargeback within 30 days, failing which the chargeback is deemed to be accepted by the owner as valid and collectable as part of the common expenses. This requires an owner to act promptly and to deal with the matter before the lien enforcement process begins.

WORKING GROUP ISSUE FORM- #DR5-B

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**CONDO vs. OWNER and OWNER vs. CONDO DISPUTES -- Enforcement of Act, decl/by-laws/rules/s.98 agreements**

Stage One Findings (summary):

Not all disputes rest on misunderstandings. Genuine disagreements exist and, when they occur, the Condominium Act prescribes mediation and arbitration as the tools for dealing with them. It also defines parameters for the process. Unfortunately, it is widely agreed that in its present form the system does not work well. These processes are often slow and costly (e.g. legal fees), with no assurance of cost recovery, even when success is the result.

Context for Discussion:

Desired Outcome	Simplified, quicker, cheaper rule enforcement process, particularly where one party does not respond to the proceedings. Use processes that will help preserve relationships and community harmony. Provide owners with options for resolution that are effective and not costly. Eliminate the need for court applications to enforce a mediated settlement, appoint an arbitrator or, if possible, to enforce an arbitration award. Where board refuses to act on complaints by owners (whether in rule enforcement cases or about maintenance/repair obligations), owners must have an equally simple method to enforce their rights. Allow access to courts to adjudicate cases only in extraordinary circumstances - otherwise remove such cases from courts. Allow condominiums to select their own creative DR processes and procedures, failing which a default method to be created will facilitate handling enforcement cases.
Current Status	Section 132(4) requires disagreements related to declaration, bylaws and rules to be dealt with by mediation/arbitration.

	Section 134 permits a corporation or unit owner or other parties to apply to Superior Court for a compliance order, so long as mediation/arbitration has first been exhausted. Section 56(1) (o) allows condos to pass bylaws setting the specific process for mediation and arbitration of disputes, but many condos have not done so. Most unit owners who fail to respond to compliance demands from the corporation utterly fail to respond to mediation and arbitration proceedings, which increases the costs incurred by the corporation when it moves forward, making early settlement more difficult and increasing the financial burden that the owner will often be saddled with. Unless the Act contains a restriction, parties to condo disputes may exercise any other legal right to which they may be entitled (s.136). Similarly, some boards may not respond to owners' complaints or proceedings, requiring the owner to escalate the dispute. Even with mediation and arbitration, one or more court applications are required to either select the arbitrator or, more likely, to enforce an arbitration award. Arbitration as now practised in condo disputes is typically quite expensive, given that the parties are paying the decision-maker as well as their own lawyers. Owners very seldom commence the mediation process themselves. Only those owners represented by lawyers take that step.
Guiding Principles	- There is no one-size-fits-all solution. A satisfactory approach to dispute resolution must incorporate a variety of tools. - Rule enforcement mechanism must be made simpler. - Many enforcement cases will involve unit owners with mental health issues.
Considerations	- Better information provided to owners and boards at an early stage will reduce the volume and the intensity of disputes. - Any DR process we recommend would likely follow several attempts by the board or manager to secure the owner or tenant's compliance with the Act or documents (or the owner's attempts to secure board's compliance). **The DR process is intended to be engaged only after several initial contacts have**

	failed to secure compliance. - It is appropriate for compliance orders and cost awards to be given against parties who fail to respond to these proceedings or who unsuccessfully resist such proceedings. - Each condo may wish to create its own customized DR process and take advantage of other opportunities, services and technologies offered by the free market, by industry associations or their cultural groups. - Mediation and arbitration are poorly known among laypeople and seldom used by them in condo disputes. For claims made by unit owners: 1. Will the delivery of better information and tools assist unit owners in better understanding the rights and obligations of the various stakeholders (owners, directors, manager) and thereby reduce the volume of disputes? 2. Will the creation of a DAA that regulates condo managers have a salutary effect of reducing the instances of boards acting badly, and thereby reduce the volume of disputes?

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1	Create a Dispute Resolution Officer (DRO) to provide early neutral evaluation (ENE) / assessment to either side of a dispute who request it or, ideally, to both parties at once. The ENE would provide parties with the chance to negotiate a resolution, or at least help them plan the next step of DR process. This officer could be part of the same office that provides the Quick Decision Maker (QDM) in Issue Form 5A-1.	- Providing early neutral evaluation or assessment could prevent many disputes from starting or from proceedings. - Assistance in settling the dispute or in planning the next step of the DR process could resolve the case or at least simplify it prior to mediation. -Low cost option for early intervention.	- Cost - Might serve as a roadblock ("one more step"), but might lead to speedier resolutions. - Volume of cases could be astronomical. - The assisted resolution might unduly overlap with mediation, but could provide useful guidance as to how to proceed with the DR

	This service could also be provided by a Tribunal or the "bureau" described below.	- Office can track cases, keep statistics of disputes to develop better information resources	process, making the mediation session more productive.
2	Status quo (med/arb/court), but add default standardized forms and procedural guidelines to apply in the absence of a by-law governing mediation and arbitration;	- Allows each community to set their own DR mechanisms. - Avoids massive cost/infrastructure of tribunal. - Reflects reality that most cases settle at mediation. - Better forms will allow parties to more clearly articulate their dispute and set out important information as to how to respond and what happens if a party fails to respond.	- System is poorly understood by unit owners and often by directors/managers. - Convincing owners to participate in mediation is very difficult. - Arbitration often requires a court application to enforce the award. System lacks early neutral evaluation or assessment which could weed out many cases before mediation.
3	Applying to Superior Court for all issues related to Act, declaration, by-laws and rules after conducting mandatory mediation. Abolish arbitration for disputes by/against owners.	- Court may be simpler and cheaper than arbitration as currently utilized.	- Courts are too formal, backlogged, slow and incredibly expensive. - Inaccessible for self-represented parties. - Generalist, non-expert decision-makers reduce predictability of outcomes, increase risk of bad decisions and therefore appeals.
4	Mediation (with improved default process) to follow the DRO intervention. See Form DR5B-2 for more details on this option.	- Mediation is established as an effective means to solve condo disputes when the parties participate.	- Mediation is not yet universally known by or familiar to the public.

5	Expedited, Simplified Arbitration, subject to strict procedural guidelines, combined with ODR/Online Arbitration. Could be offered by private sector exclusively, either with or without a "roster" concept. See Form DR5B-3 for more details on this option.	- Parties can choose their own expert decision-maker to hear evidence and give quick ruling with less formality than a court process. - Greater default procedures would simplify and shorten arbitration hearings. - Quick decision-making, summary process, inexpensive. - No large infrastructure or cost. - Greater flexibility for costs recovery, but should be small awards. - ODR option would provide flexibility in scheduling, allowing participation from home/office or after hours. - ODR platforms and technology growing rapidly, may quickly become mainstream. - Limited appeal rights add certainty, reduce costs, level the playing field.	- If a private player, might not be perceived as entirely neutral, or may not achieve widespread acceptance by unit owners for other reasons. - An ODR option would eliminate the "day in court" but offer greater accessibility/flexibility. - Small costs awards against unsuccessful parties might help weed out unmeritorious claims but could be an obstacle for legitimate complaints. - Arbitral awards still require a court application to enforce them, but this offers procedural safeguards to owners.
6	Make any and all DR processes optional (but subject to conditions), and allow condominiums to establish or select their own DR processes using a by-law.	- Rather than mandate a particular method or process, allow condos to create or select their own.	- Few condos bother passing by-laws, even when very sensible or crucial. - Many different process may create inconsistent results.

			- Owners would have no feeling of control over the process.
7	Condo tribunal, whether traditional (LLTB, HRTO) or online (BC's new CRT). Decision-making body would rule on various cases and provide mediation services where feasible.	- May be viewed as more authoritative, neutral than private arbitrators. - Tribunal orders are enforceable as court orders (SPPA, s.19) - No further action required. - Process could be designed to require mediation before hearings. - No response by unit owner within specified time could result in speedy default order.	- Volume of cases would require a massive dedicated infrastructure investment. -Multiple applications by same unsatisfied unit owners could hamper operation of the condo. - Other tribunals (LLTB, HRTO) show backlogs and long delays. - Having a tribunal at the end of the process might reduce the odds of early resolution, as people would want their day in court if it was inexpensive.
8	"Bureau" model as per Condo Act 1980/90 (here) - ss. 56-57. Review officers with broad mandate to assist in disputes and give rulings on range of matters.	- Could form the theoretical basis of a new bureau or tribunal. - 1980 Bureau had the power to make binding orders without the usual tribunal requirements. - Intended to be funded by levies on condo corporations.	- System was never implemented, is therefore untested. - Would require large cash investment to set up. - No idea what the likely caseload would be. Could be massive.
9	Court applications be available in extraordinary cases only (section 135 oppression applications remain available as current, but, section 135 compliance applications be available only in	Access to the courts should be preserved, but only for rare cases. - Provides parties with these important remedies	No cons!

	situations requiring urgent, drastic action to protect life, limb and property).	for appropriate cases.	

Recommendation:	We recommend options 1 (DRO), 4 (mediation with default procedures), 5 (expedited, simplified arbitration, with online option and default procedures) and option 9 (court applications in extraordinary cases only). Having a DRO as the early intervention (see Form DR5B-1 for details) would provide early neutral evaluation and/or to try and facilitate a resolution of the case all on a confidential basis. If no settlement is achieved, DRO would direct the parties to the next step of the DR process, being mediation and then expedited arbitration (or straight to expedited arbitration if the parties and the DRO concur). The DRO could give binding compliance orders in the event that a party chooses not to respond or participate, thereby avoiding the necessity and cost of the matter proceeding to further steps, given that there appears to be no dispute. If a dispute requires further action, it would ordinarily proceed to mediation unless the parties and the DRO concurred (in exceptional cases) that the matter should go straight to adjudication. See Form DR5B-2 for details on mediation.. The bulk of cases that make it this far will be resolved at this stage. If mediation does not resolve the case, an expedited, simplified arbitration would be convened and held where the matter will be decided. See Form DR5B-3 for details.
Recommendation Rationale:	Providing owners with better information earlier (see Form DR1) and allowing them the option to obtain early neutral evaluation will help them make informed choices at an early stage in any case and, in proceedings commenced by the condo corporation, that info and evaluation may convince owners to participate in the process earlier and adopt a more productive position. Early invention by the DRO will likely eliminate or resolve most disputes. It will provide owners with a relatively informal, inexpensive and non-binding forum to "have their day in court." This process might in many cases provide the parties with a much-needed reality check which is often desperately needed.

	The vast majority of cases that are not resolved through early intervention will be resolved at mediation, which will be aided by improved procedures. Those few cases that are not settled at mediation will be decided by a arbitration featuring improved default procedures and greater flexibility intended to speed cases up while lowering costs and inconvenience to parties. The trend towards removing cases from the traditional justice system should not, and probably cannot, be reversed. Abolishing the s.135 oppression remedy would be a mistake, given the court's broad remedial powers that can be exercised sparingly, in appropriate cases. Such cases are brought only rarely, but s.135 is a powerful tool to be kept for those few cases that need it. Section 134 compliance applications should become far less common but remain available for extraordinary cases requiring urgent-urgent drastic intervention by a court, such as when a section 117 dangerous condition requires rapid "nuclear" response. No DR method should circumvent the democratic tools available to unit owner to requisition meetings and remove/replace directors. Similarly, unit owners experiencing prolonged difficulty with their board should be exercising their democratic prerogative as a first option, rather than waging wars.
Notes:	For clarity, the condo lien enforcement process should remain unchanged, but disputes about the validity of chargebacks may be dealt with using the quick decision-making process we recommended in Form DR5A and described in DR5A-1. Note to Governance: In order to avoid scenarios where unit owners dispute a chargeback in the midst of a condo lien enforcement proceeding, we recommend that chargebacks be posted by the corporation giving a notice of the item and which requires the owner to dispute the chargeback within 30 days, failing which the chargeback is deemed to be accepted as valid and collected as part of the common expenses. This requires an owner to act promptly and to deal with the matter before the lien enforcement process begins. Arbitration would become even more effective if arbitral awards could be enforced more easily. We advocate the concept of arbitral awards being enforced simply by filing them at superior court, rather than having to bring an application to enforce them as is now required.

	Additional item: **DISCLOSURE OF DISPUTES:** While the Act requires cases before courts, tribunals and arbitrators to be disclosed on status certificates, it is not mandatory to disclose on status certificates cases involving the condominium corporation that have been submitted to mediation. Some of us recommend that cases submitted to mediation be disclosed in Status Certificates in the same manner as cases before a court, tribunal or arbitrator.

WORKING GROUP ISSUE FORM- #DR5B-1

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**DISPUTE RESOLUTION OFFICER (DRO) AS EARLY INTERVENTION IN ENFORCEMENT CASES**

Stage One Findings (summary):

Unfortunately, reliable information isn't always enough. Many disputes involve genuine differences of opinion over responsibilities or rules. When this is so, a more nuanced assessment of the case may be in order. To provide this, some participants called for the creation of a dispute resolution officer or ombudsperson.

The dispute resolution officer (DRO) would not be a mediator, but more of an analyst who could examine the circumstances of the case and provide a quick, neutral, inexpensive and informed assessment of its merits. This assessment would be neither binding nor definitive, but would be offered only as expert advice. Lawyers would not be directly involved or their use would be discouraged in this process.

Context for Discussion:

Desired Outcome	- To create an officer and a process to provide early intervention in condo disputes by providing early neutral evaluation (ENE) that will provide the parties with the opportunity to hear each other's position and the assessment of the DRO, all on a confidential basis,, which will likely resolve (or at least simplify) most disputes that are brought. Those disputes that are not resolved can proceed to further steps. - The DRO should have the power to give a default order in those cases where one party to the dispute does not respond and does not participate in the proceedings. This will bring the dispute to an end at this point. - To help even the playing field by providing unit owners (who are typically unrepresented and have not received advice from a lawyer) with a neutral assessment of their case and the opportunity to be heard by the board and by a neutral party in a relatively informal, inexpensive process.
Current Status	No such office presently exists in Ontario, although some American states have implemented such officers as part of an ombuds office, which has met with

	varying degrees of success.
Guiding Principles	- DROs must be qualified to assess the various cases that will come before them (which will require a number of years' experience in practising condo law or management) and must be seen as impartial and neutral. - The body housing the DROs must be trusted, perceived as neutral and objective. Users must feel that they have been heard and have received a valuable assessment of their case and other useful information to help them decide whether to proceed or whether and how to resolve their case. - The ENE will provide useful information to parties as to the balance of the DR process, which will fill the current void that hampers effective use of mediation and arbitration.
Considerations	- Selection/qualification of DROs will be both difficult and important. - If made mandatory (as we recommend), there will be high demand for this service, meaning that a streamlined process and "triage" concept will be necessary in order to handle the likely volume of cases in a timely way. - Use of technology will be essential to processing such cases, given that most people cannot take time away from work to attend an in-person session and in order to roll out the service to remote locations throughout the province. - Technology (and its acceptance) is improving.
Long-Term Implications	Cost, public acceptance and overall reduction/de-escalation of disputes.

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1.	House the DRO as part of the "Condo Office" recommended in Forms DR1 and DR5A-1. The DRO would provide early neutral evaluation on a non-binding basis.	- Allows operational efficiencies, since DROs can be mixed with Quick Decision Makers (QDMs). - Would provide a neutral, trusted source of information and gain acceptance by the public.	- Significant start-up and ongoing operational costs. - Issuing default orders would require procedural safeguards and a means to overturn such orders in appropriate cases (where

	Optional: If a party refuses to participate or respond to the proceeding, the DRO would be empowered to issue a binding default order and thereby end the dispute.	- Careful selection of officers would help ensure quality results. - Officers at a single condo office could be given statutory powers	failure to attend inadvertent, etc.).
2.	Allow DROs to be provided by the private sector	- No cost to taxpayer. - Greater flexibility as to structure and processes than a government dept. or a govt-mandated office. - Private sector typically rolls out innovative technology and services quicker than institutional players. - Less oversight and screening of personnel.	- Funding would be completely user-pay, making it expensive. - Likely perception of bias, lack of objectivity making public acceptance difficult. - There may be several different service providers, creating greater possibility of inconsistent processes and results.
3.	Permit DROs (wherever they are housed) to issue binding default orders under SPPA s.19 if a party chooses not to respond or participate. These orders would be limited to certain types of things (people, pets, parking).	- DRO likely has sufficient evidence to decide the case on a summary, default basis. Such order could be given the same weight as a tribunal order which would eliminate the need for further proceedings or costs and could be enforced immediately as though it were a court order (under SPPA, s.19). - This type of decision-making power was conferred on the "Bureau" in the 1980 Condo Act.	- Would require careful process to notify parties to disputes in advance of the ENE session and also provide a way to overturn default orders in appropriate cases. - There is a philosophical argument against a person intended to be the evaluator to become the decision-maker.
4	As an alternate to 3: If a party chooses not to respond or participate, costs thrown away are	- Frees up DROs for additional ENEs, rather than deciding cases, shifts adjudication to another body with another process.	- Adds another step and another cost - wasteful if the absent party won't participate in arbitration,

	awarded to participating party and the case is ordered to arbitration.		either. - Arbitration orders are not enforceable as readily as a tribunal order (SPPA s.19)

Recommendation:	Options 1 and 3 - Create DROs, house them in the Condo Office, and give them the power to issue default orders where a party fails to respond or participate in the mandatory early neutral evaluation (ENE) process. After initial creation, the DRO service should be funded by a blend of the levy on condo corporations, combined with a user-pay system. The user fee should be set so as to recover a significant portion of the cost of the service but not so high as to hamper access. The DRO service should be rolled out as a third phase of the Condo Office's operation (following Information Delivery and Quick Decision Making). - Through the DROs, the Condo Office would keep detailed statistics of the number and type of disputes passing through that office, and other useful information. - DROs would ideally be drawn from a pool of professionals who have practised in the condo sphere for a number of years. They would have the same qualifications and powers as Quick Decision Makers referred to on Form DR5A-1. In fact, the same individuals could potentially fill both functions (though not in the same case). - In order to encourage parties to use the DRO's ENE process in a more friendly, less adversarial manner, costs recovery for lawyers' fees in respect of that process should be excluded from the cost recovery regime described in Form DR7. While parties can take lawyers to these proceedings if they wish, they do so at their own cost, with no prospect of recovery. Lawyers can always productively be used when preparing the paperwork and preparing for the evaluation session. - DROs would need to be given immunity from liability.
Recommendation Rationale:	- ENE from a neutral, trusted body helps balance the scales where a unit owner has received no legal advice or representation. - The system should be created so as to help parties manage the process without counsel, which may help encourage more open communication

	and increase the odds of settlement while reducing costs. That said, the use of lawyers should not be restricted outright but ought not to be encouraged. - Even if a party does not accept the outcome of the ENE, they will have received the benefit of the service, greater insight into their case and the position of the other side and will at least be armed with some knowledge as to the adverse consequences of proceeding with the matter and being unsuccessful. Even if ENE results in few settlements directly (which is unlikely -- most cases will likely be resolved at or immediately following this process), the exercise will provide the parties with valuable insight, knowledge and an opportunity to listen and be heard. - As part of the ENE, the DRO will provide information about the balance of the dispute resolution process that will impress upon the parties the wisdom of finding a resolution quickly and to participate in the mediation process to follow. - The concept of there being no costs recovery for ENE processes with the DRO seems counter to the growing concept that condominiums recover all of their costs. It recognizes and addresses the growing trend that many disputes are exacerbated over the issue of costs and it recognizes that condominiums should be budgeting legal fees for handling disputes of any kind. - The data that can be collected through the Condo Office would provide valuable insight into the type of information that should be created or improved by the Condo Office for delivery to the public.
Notes:	1. Given the short timeframe and massive scale of the undertaking, we were not able or equipped to design this process in detail. We would, however, recommend that cases proceed to the DRO using a standardized, prescribed form that allows for the key relevant information and details to be provided)and relief requested), and sets out the next steps clearly and concisely and explains consequences of failure to respond. 2. Our discussions contemplated that the DRO would be able to spend perhaps as much as 2 hours with the parties in each case. Some cases will require less, some will require more, but at least the parties will likely feel that they have been heard, which may be enough to reach a settlement. 3. There was significant discussion as to whether parties should be permitted to bring lawyers to this process. Some felt strongly that allowing lawyers to attend would reduce the odds of finding common ground or drive up costs, while others held that lawyers make a positive

	contribution in resolving disputes. Since there was serious concern that disallowing parties to bring lawyers (or a support person or translator) would raise constitutional and other serious issues, the consensus was that the process should be sufficiently simple for owners and boards to feel comfortable attending the session without a lawyer, and that there should, at a minimum, be a cap on cost recovery for lawyers' fees if a party choose to bring a lawyer to the early intervention with the DRO.

WORKING GROUP ISSUE FORM- #DR5B-2

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**MEDIATION IN ENFORCEMENT CASES**

Stage One Findings (summary):

Participants from all parts of the community enthusiastically affirmed the value of mediation, when properly executed. Experts argued that good mediation can often find common ground, even in highly polarized situations. There was much support for redesigning the system to support a more effective use of sound mediation practices.

Context for Discussion:

Desired Outcome	Improve the process for mediation to make it speedier, simpler/easier and less expensive. Increase the odds of unit owners participating in the process.
Current Status	Mediation is run entirely through and by the private market. Mediation works well when the parties participate. The problem is that unit owners often do not participate for any number of reasons, including: * they may not dispute that they are in violation and do intend to respond; * they may dispute that they are in violation but do not understand what mediation is, the submission process, the forms, or the ramifications of not participating, and they are off-put by the selection process and how the mediator's fees are paid; * they may be off-put by the fact that they may have to pay part of the cost of the mediation, whether upfront or at all; and * they may be concerned about being "outgunned" by the condo corporation (represented by its board, manager and lawyer). The Act currently provides no default process for how mediation and arbitration are to be conducted. As it now stands, ss. 132(1) (b)(i) creates a 60 day wait period for the parties to select a mediator, which is unworkable and unreasonable, causing delay and extra cost.

	While a number of condominiums have passed by-laws governing the procedure for how mediation and arbitration are to be conducted, these by-laws are all over the map -- some offer sensible guidelines and others add little more than what the Act currently provides.
Guiding Principles	As stated, mediation works well but requires improvement. Better information provided by the Condo Office and by the DRO during the early neutral evaluation process will probably increase the odds of both sides participating in mediation. Mediation is a flexible tool that can (and often does) exist both within and independently of any government office, tribunal or court process. A well-developed marketplace of mediation service providers presently exists, and the supply and demand for those service providers are governed by the free market.
Considerations	Should mediation be incorporated as part of the Condo Office, or should it be allowed to exist as is in the free market? Should the process be improved? How about for those condos that have already passed bylaws establishing procedures for mediation and arbitration?

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1.	House the mediation process as part of the "Condo Office" recommended in Forms DR1, DR5A-1 and DR5B-1.	- Would provide a neutral, trusted source of information and gain acceptance by the public. - Careful selection of mediators would help ensure quality result and minimum level of qualifications. - Officers at a single condo office could be given statutory powers that could/should not be assigned to private actors.	- Significant start-up and ongoing operational costs. - Qualification of mediators would require screening, vetting that would detract from core functions of providing info, quick decisions and ENE. - Significant facilities may be needed to accommodate mediation.

2.	Allow mediation to be provided by the private sector as per status quo.	- No cost to taxpayer. - Greater flexibility as to structure and processes and service delivery than a government dept. or a govt-mandated office. - Private sector typically rolls out innovative technologies and methods and service delivery models more quickly and cheaply than government actors. - Better choice of mediators.	- Funding is completely user-pay. - Potential perception of bias, lack of objectivity. - No oversight or screening of practitioners.
3.	Create a default procedure for the conduct of mediation, dealing with the selection of a mediator, the way in which the mediator is paid and conducted. Current 60 day period for parties to select mediator should be shortened to 20.	- Would simplify and improve process and lead to lower costs. - Would eliminate the current lengthy delay during which time the moving party's hands are tied.	- Might conflict with by-laws passed by condos to provide procedures for mediation and arbitration.

Recommendation:	Options 2 and 3. Mediation should continue to be provided through the private market, but should be improved with a set of standardized default procedures. Mediation should continue to be mandatory for disputes related to the declaration, bylaws and rules. We recommend that a default process be designed for how mediation proceeds. We had insufficient time and resources to focus on designing the process ourselves. We note that the BC Strata Property Act contains such a process.

	Additionally, we think that making condo mediation subject to the *Commercial Mediation Act, 2010* could be productively explored as part of the design process and, importantly, as a means to expedite and simplify enforcement of mediated settlements. The extent to which the default procedures should override any established procedural by-laws is unclear, but it may be easiest to prescribe a good process that would supersede any by-law. To help address power imbalances, we recommend that mediation take place only after the early neutral evaluation with the DRO, as contemplated in Issue Form DR5B-1.
Recommendation Rationale:	In the 12 years that it has been mandated, mediation has grown in acceptance but still has some way to go. It should remain mandatory given the high success rate of resolutions. The cost of providing mediation through a central office, though initially attractive, would be unnecessarily costly and would distract the Condo Office from its core functions of providing quality information, quick decision-making and early neutral evaluation. The marketplace of well-trained and experienced condo mediators has developed in the last several years, offering significant choice and at different price points. Parties should be free to select their mediator from the free market, rather than being restricted to a roster kept by the condo office. If the Ontario Court Mandatory Mediation Program is any indication, many good mediators will avoid that roster because the mandated fees are too low and the engagement is too restrictive. Though a number of condos have passed bylaws to govern the conduct of mediation and arbitration, they can and should be safely ignored. Various different processes simply breed confusion among lawyers, managers and mediators (who all work with multiple condominiums). A uniform, simplified process would be a better way to go and it would always be open for the parties to agree to vary that procedure to suit their own cases.

WORKING GROUP ISSUE FORM- #DR5B-3

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**ADJUDICATION BY SIMPLIFIED, EXPEDITED ARBITRATION (including ODR)IN ENFORCEMENT CASES**

Stage One Findings (summary):

As the term suggests, adjudication is when someone outside the parties to the dispute has the authority to make a decision about the case and impose a solution on the parties. At least three different tools for this kind of dispute resolution were proposed and discussed in the various streams.

Context for Discussion:

Desired Outcome	How to best configure arbitration as the model for adjudicating disputes between condo corporations and unit owners related to the Act, declaration, by-laws and rules (as set out in Form DR5B) that are not resolved through information, informal methods, early neutral evaluation and mediation.
Current Status	Arbitration is offered exclusively in the private market. A number of individual practitioners and groups (or companies) offer arbitration services at market rates. Very few condo disputes between condo corporations and owners go as far as arbitration, usually because most cases settle earlier in the process or one side simply chooses not to proceed, given the required effort, inconvenience and cost. It is rare for unrepresented unit owners to participate in arbitration. The reason costs can spiral out of control in arbitration as it's now practised is the level of formality required in the procedural aspects, prior to and including the hearings. The preparation of detailed reasons is another large contributor to the cost.
Guiding Principles	- Process must be simpler, easier and more clearly laid out, which will help address the power imbalance.

	- Process must comply with the *Arbitration Act, 1991.*
Considerations	We have already recommended other methods for unit owners to obtain quick decisions on common items like records, proxies, and chargebacks. We have also recommended that a DRO be empowered to give binding default orders where a responding party fails to respond or participate in the early neutral evaluation process, which might help reduce the number of cases which require an arbitrated adjudication. ODR technology is quickly improving and gaining ground, making online arbitration an increasingly attractive option.

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1.	Offer arbitration through the Condo Office	- Would provide a neutral, trusted source of information and gain acceptance by the public. - Careful selection of arbitrators would help ensure quality result and minimum level of qualifications.	- Significant start-up and ongoing operational costs. - Qualification of arbitrators would require screening, vetting that would detract attention and resources from core functions of providing info, quick decisions and ENE. - Significant facilities may be needed to physically accommodate arbitration. - Hefty user fees would be needed to offset the inordinate resources required.
2.	Arbitration continues to be provided by the private sector marketplace, but improved.	- No cost to taxpayer. - Greater flexibility as to structure and processes and service delivery than a government dept. or a govt-	- Funding is completely user-pay, - Potential perception of bias, lack of objectivity.

		mandated office. - Private sector typically rolls out innovative technologies and methods more quickly and cheaply. - Better choice of arbitrators.	- Less oversight and screening of personnel.
3.	Create a default procedure for the conduct of arbitration, dealing with the selection of an arbitrator, the way in which the arbitrator is paid and how the case is conducted. Facilitate and encourage use of ODR.	- If designed correctly, an improved, simpler process can lead to easier negotiation of the process and lower costs. - Use of ODR will make quality decision-making available to the most remote areas of the province.	- Might conflict with by-laws passed by condos to provide procedures for mediation and arbitration.

Recommendation:	**Options 2 and 3.** Arbitration should continue to be offered by the private market but improved so as to simplify, expedite and reduce the cost of the proceeding. We recommend that a default process be designed for how arbitration be conducted. We had insufficient time and resources to focus on designing the process ourselves. We note that the BC Strata Property Act contains such a process and that various components could be borrowed from the models used by other jurisdictions and models both within and outside of the condo sphere. - The extent to which the default procedures should override any established procedural by-laws is unclear, but it may be easiest to prescribe a good process that would supersede any by-law.
Recommendation Rationale:	- While arbitration may not be the ideal adjudication model, it is among the most flexible and can, if properly structured, offer a good adjudication process. Without a good basic procedure in place, arbitration tends to go sideways as the parties tend to design their own process for their case or slavishly follow the Rules of Civil Procedure, with most lawyers are more comfortable.

	- An increasing number of disputes (from purchasing computer equipment to registering website domains to handling family law disputes) are moving towards arbitration. This trend will only continue. - The trend away from expanding court resources or creating expensive new bodies or tribunals appears unlikely to change. Courts and existing tribunals will continue to make do with fewer resources. - While the BC Tribunal model appears to hold some promise, it is too early to determine whether it will prove successful or economical. - To help address power imbalances, we recommend that arbitration not take unless having been given the early neutral evaluation with the DRO, as contemplated in Issue Form DR5B-1.

WORKING GROUP ISSUE FORM- #DR6

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**CONDO vs. TENANT DISPUTES (Enforce Rules Against Tenants)**

Stage One Findings (summary):

The findings report did not address this issue but noted that the number of tenanted units is rapidly increasing and the conduct of bad tenants creates a significant disruption in quality of life of other residents, giving rise to additional disharmony, conflict and cost.

Context for Discussion:

Desired Outcome	Create an expedited process by which a condo corporation can remove a tenant in wanton breach of the condominium's declaration or rules and whose owner (whether an offshore owner or otherwise completely disengaged from the condominium) refuses or fails to remove the offending tenant when asked.
Current Status	At present, condo corporations can demand that an owner secure the tenant's compliance with the Act, declaration, by-laws or rules. Owners will often obey these demands by securing the compliance or, alternatively, evicting the offending tenants. The process takes time, and the owners sometimes fail to secure the compliance or the eviction. During this time, other residents may be enduring noise/nuisance or other problems. Condo corporations have the power to seek a compliance order against the tenant under s.134 (4) which, if breached, requires a second application to the court to obtain an order terminating the tenancy. The established case law provides, however, that in order to recover any costs against the unit owner, the condo corporation must first give the owner notice of the problem and a reasonable chance to secure compliance or evict the tenant. This will often involve many months to pass. The Act does not mandate mediation for disputes related to tenants and tenants typically do not (but sometimes may) participate in mediations under the Condo Act, but tenants can and do participate in landlord/tenant

	mediations at the LLTB with high rates of resolution and satisfaction. There is widespread uncertainty as to which act prevails where the Condo Act and the Residential Tenancies Act conflict. LLTB members are routinely making erroneous decisions when it comes to "no pet" and other condo-related issues, which causes additional friction and cost at the condo.
Guiding Principles	Ensure that tenants are registered with the condo and are given the declaration, bylaws and rules. Landlords must always be given notice of breaches by their tenants and given an opportunity to rectify the situation, and if the owner fails to act appropriately, then the condo corporation may secure a solution (even a drastic solution like termination/eviction) at that owner's cost. Add clarity to the law for landlords, tenants and LLTB adjudicators.
Considerations	It is quicker, easier and cheaper for the unit owner to apply to the Landlord Tenant Board to evict their own tenant than for the corporation to obtain an initial compliance order and then an order terminating the tenancy. Landlords are often reluctant or don't know how to successfully make those eviction applications and may often prefer for the condo corporation to do it for them, except the condo arguably has no standing to do so except by applying to court under s.134. Given that the number of units owned by owners that live abroad and/or are completely disengaged from the condominium corporation, it makes sense to allow the condo to proceed to evict the tenant in a quicker, simpler way. In cases where owners fail to obey section 83 by filing a summary of the lease place their condominium at a disadvantage since the condo will not know the name and particulars of the tenant. Act should clarify that condo has the right to deny entry/services to any person not registered as a tenant.
Long-Term Implications	In cases where the landlord fails to obey s.83 by giving notice of the lease, earlier direct contact between tenants and condo manager may increase odds of tenant obeying the rules and being a better neighbour.

Options and Recommendation:

	Options:	Pros:	Cons:
1.	Clarify s.83 to permit condos (after giving owners fair warning) to deny entry and services to unregistered tenants. Permit tenants to file the s.83 notice on landlord's behalf and to receive the condo docs from management directly where owner fails to do so.	Will give teeth to s.83, which is presently ignored and cannot be practically enforced. Allows condo to effectively compel landlords (or tenant) to deliver particulars of the lease. Creates opportunity for tenant to meet manager, be given the condo docs and informed of expectations when such would otherwise not happen.	Slightly added administrative burden to condo manager, but no big deal. Tenants will suffer inconvenience if locked out, even if temporarily. May create possibility of abuse.
2.	Modify s.134 (4)(a) to eliminate the requirement that a tenant has breached a compliance order before a court can terminate the tenancy. Instead, court must only be satisfied that the tenant has breached the Act or condo documents.	Removes need for 2 separate court applications to terminate the tenancy. Speeds up the process. Preserves judge-made rule requiring condos to give landlords notice and opportunity to evict tenants before the condo seeks termination or eviction.	Still requires a court application to terminate a tenancy, which is costlier and takes longer to accomplish than LLTB application. Owners of bad tenants are saddled with massive cost of the court application.
3.	Create a new provision in the Condo Act and/or modify the Residential Tenancies Act to permit the condo corporation to terminate leases and evict tenants as a result of a significant breach of the Act or condo documents. - Condos would give termination notices which, if ignored by landlord and tenant, could be enforced by condo	Allows condos to do what owners refuse or fail to do so as to secure compliance. Landlords may appreciate the option of allowing the corporation to take this step for them at a lower cost than going to court. Corporation's professionals could ensure that termination/eviction	Gives rise to possibility of condo corporation being painted as "landlord's agent" in unrelated, inappropriate ways, but this could be overcome by statute. - Would add additional volume to LLTB caseload and may require some new forms and processes.

	seeking termination/eviction application in the Landlord/Tenant Board (as is currently allowed in Nova Scotia's Condo Act, s.44C).	process is done correctly and that all necessary evidence and arguments are brought to bear. Process is cheaper, can be performed by paralegals rather than lawyers.	
4	Modify the Act to allow mediation of declaration, by-laws/rules disputes with tenants where condo and both tenant and landlord) agree to participate.	More effective solutions can usually be found at mediation, so long as all necessary parties are involved. Some tenants are high-quality occupants who raise issues that are supported by resident owners. Might help protect tenants where condo is enforcing rules unreasonably.	Unless the process is carefully designed, may create potential delay in the dispute resolution process. Could be abused by bad apple tenants.
5	Add a primacy clause to codify the extent to which the Condo Act trumps the Residential Tenancies Act.	- Adds clarity in LLTB disputes. Reduces instances of erroneous decisions. - Implements established Court of Appeal jurisprudence.	- Interplay with another statutory regime is always complex and will give rise to some growing pains.

Recommendation:	**All of the above options.**
Recommendation Rationale:	Current system of dealing with tenants is wholly unsatisfactory. With increase in investor-owned units and absentee or offshore landlords, the problem will grow far worse unless solved effectively.

	Nova Scotia's Condominium Act (s.44C) already allows condominiums to apply to the Residential Tenancies Board (under NS RTA s.13) to terminate a tenancy and evict a tenant where the landlord fails to cure a breach of the declaration, bylaws or rules after the condo has given notice. This appears to be an optimal solution.
Notes:	Requires consultation with MMAH and Residential Tenancies Act (LLTB).

WORKING GROUP ISSUE FORM- #DR7

Working Group:	**DISPUTE RESOLUTION**
Issue/Problem Statement:	**COSTS RECOVERY**

Stage One Findings (summary):

In mediation, arbitration and legal action, costs escalate quickly, yet there is no assurance that a successful party will be compensated, in full or part, for their costs by the other party. Such compensation is often appropriate and this should be made clear in the Condominium Act.

Context for Discussion:

Desired Outcome	Remove uncertainty as to the liability of a party to pay the costs incurred by the condo corporation in enforcing the Act or its documents. Provide the owner responsible for those costs with the ability to assess them, so as to prevent being saddled with unreasonable costs. Level the playing field by providing condo unit owners with the ability to receive greater indemnity for their costs of successfully enforcing the corporation's compliance.
Current Status	Section 134(5) allows a condo corporation to collect all of its "additional actual costs" incurred in obtaining a compliance order. Courts have noted that the provision is intended to indemnify condo corporations against the cost of enforcing its documents in proper cases, but that the provision is subject to abuse. Moreover, there appears to be no provision to allow unit owners to be entirely indemnified for their costs of successfully enforcing the corporation's compliance. Where unit owners successfully establish that a board has breached the duty to act honestly and in good faith, courts have award costs against those

	directors personally (see: MCC 232 v. Owners, and Boily v. CCC 145). Arbitrators have the same power as courts in this regard.
Guiding Principles	● Provide clarity as to entitlements, risks and the process. ● Codifying judge-made law. ● Create checks and balances to prevent abuses in the legal costs
Considerations	While perhaps incorrectly, it has become common for condo corporations to expect 100% recovery of its legal costs in dec/by-law/rule enforcement cases, even where no adjudication has taken place. Condo corporations are typically not appropriately budgeting for legal costs in securing compliance. This seems to prompt corporations to charge back legal costs to an owner even when not specifically authorized to do so by the Condo Act. The act of charging back legal costs of demand letters often gives rise to an entirely fresh dispute. As for pursuing legal costs against former directors, it always remains possible for a board to pursue former directors for negligence or for not acting honestly and in good faith and seek recovery of costs incurred by the condo corporation. It is also currently possible for courts to award legal costs against directors personally where the corporation is unsuccessful in litigation. No amendment to the Act may be necessary to achieve this purpose. With recent court decisions making directors personally liable for massive costs awards, the trend towards penalizing directors in appropriate cases will continue and judges will make such awards in appropriate cases, thereby "chilling" some of the more egregious behaviour reported by owners. Continue establishing the concept that the corporation and innocent unit owners should not be required to absorb the costs incurred to compel a single owner to comply with the Act and documents.

Options and Recommendation:

	Options:	**Pros:**	**Cons:**
1.	Amend s. 134(5) to clarify that a decision-maker (arbitrator, court or otherwise) should have power to fix (and assess) costs (including complete indemnity)	- Clarifies meaning and effect of the remedy and reduces judges' discretion as to costs. - Judgement award is 'all-	- This only works if the dispute has reached a final decision. It does not address treatment of costs if the dispute resolves

	of the entire dispute (i.e., prior to start of the formal DR process).	inclusive'	prior to final decision.
2	Consider whether to allow substantial/complete indemnity costs to unit owners on successfully obtaining a compliance order vs. condo. Consider whether including complete cost indemnity for owner.	- Same rules for award, for owners and corporations - Clarifies rules for judges. - Levels the playing field.	- Might encourage influx of applications by owners.
3	Allow courts to relieve certain owners from paying the proportionate share of the cost award against the corporation	- This may help compensate unit owners who succeeded against their condo and prevent being "double-whacked" by paying their proportionate share of costs to be paid to themselves.	-Awkward to administer messes with orderly division of common expenses.. - Causes division in the community
4.	Amend s.132 to eliminate the costs-allocation power of mediators, and to allow the corporation to front the cost and collect it later. - Clarify that costs of mediation presumed to be shared, but that subsequent decision-maker may reallocate those costs if requested.	- Eliminates an awkward power that mediators, seldom use. - Alerts owners that costs (for which they may be held responsible) are mounting. - Allowing the condo to front the cost will remove roadblocks and allow many more cases to be mediated.	- No cons!
5.	For cases decided by a "quick-decision maker" or a tribunal or a DRO, unsuccessful parties should be subject to small, punitive costs award (perhaps twice the amount of the applicable filing fee)	- Partial indemnity of a successful party is a keystone of justice. - Even small costs awards are useful as they serve as condemnation (or vindication) and discourage frivolous claims and defences.	No cons. - Condo corporation cannot recover the costs of the condo's lawyer, which (positively) might encourage boards to reconsider bringing lawyers for simple matters

		- Costs awards against corporations (even small ones) are charges for which the board must account.	of relatively little consequence.
6	(Housekeeping) Amend the Act to codify the ability of a party responsible to pay costs to assess those costs using subsection 9(4) of the Solicitors Act. Aligns with options 1 and 2.	- Provides clear mechanism for owners to assess legal costs in compliance cases where parties settle or where court/arbitrator does not fix the costs.	- No cons!

Recommendation:	Options 1, 2, 4, 5, and 6. - In order to encourage parties to use the DRO's early neutral evaluation process (see Form DR5B-1) in a more friendly, less adversarial manner, costs recovery for lawyers' fees in respect of the ENE session should be excluded from the cost recovery regime. While parties can take lawyers to these proceedings if they wish, they do so at their own cost, with no prospect of recovery.
Recommendation Rationale:	- The costs recovery provisions need to be clarified so that parties and judges/decision-makers understand them, apply them uniformly and so parties can set their expectations accordingly. - Condos' expectations that they will customarily recover all of their costs may need to be re-set, having regard to recent court decisions that have disallowed costs where the cases appeared to have been "over-lawyered." Condos should return to the concept where they budget a certain amount per year for enforcement matters, rather than expect (perhaps unreasonably) that they will recover every dime they spend on enforcement, which expectation causes them to approach disputes with an all-or-nothing mentality. - While courts have been known to tinker with an owner's proportionate share of common expenses (as in option 3), this practice should be discouraged, as it creates difficulties in administration and an element of unfairness. While the point may be trite, it may be worth adding provisions to clarify that the allocation of common expenses is sacrosanct.