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ONTARIO'S CONDOMINIUM ACT REVIEW

Stage One Findings Report

JANUARY 2013



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

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

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PREFACE

On behalf of the Public Policy Forum (the Forum), I am pleased to share the release of this Findings Report with the Ministry of Consumer Services. The report contains the findings of Stage One of Ontario's review of the *Condominium Act, 1998* (the Condominium Act). With the release of this report, Stage One of the process comes to a close.

The views expressed in the report are the views of the Public Policy Forum and do not necessarily represent those of the Province of Ontario or the Ministry of Consumer Services.

Stage Two of the process will begin early in Spring 2013, when groups of experts in condominium issues (including owners) will be convened and, over five months, will work together to develop a detailed set of options for renewal of the Condominium Act, based on the findings of this report.

In Stage Three, which will begin in the fall of 2013, the options will be reviewed and validated by condominium residents and other stakeholders, after which they will be presented to the government and the condominium sector.

So, although Stage One is now complete, the process continues and will include many more opportunities for public input, beginning with feedback on the report, which we encourage and welcome. Comments can be submitted online at oncondo@ontario.ca.

Before closing, I would like to express my personal appreciation to some of the people involved in the process. First, I am grateful to the staff at the Ministry of Consumer Services, whose professionalism and commitment to the project has been crucial to its success so far.

My thanks to Winnie Wong, my colleague from the Forum, for her diligent work throughout Stage One, to David Mitchell, the Forum's president, for his support, and to all the Forum staff who put their time and effort into bringing Stage One to completion.

Giles Gherson, Deputy Minister of Consumer Services, has been a driving force behind this project and our work could not have been accomplished without his enthusiastic support.

The process and the report have benefited greatly from the impressive talents of the staff at MASS LBP, especially Peter MacLeod, who designed and led the Residents' Panel.

I'd like to express my special appreciation to the Honourable Margaret Best, Minister of Consumer Services, for her leadership in this initiative.

Finally, and most importantly, I offer a heartfelt thanks to all the participants, who have provided us with the content for the report by taking the time to participate in the various discussion streams. We look forward to hearing their feedback on the findings and to the discussions yet to come in Stages Two and Three of the process.

Don Lenihan
Vice President, Engagement
Public Policy Forum
January 2013



EXECUTIVE SUMMARY

A Public Engagement Process to Review Ontario's Condominium Act

Ontario's *Condominium Act, 1998* (the Condominium Act) came into effect over a decade ago. Since then, Ontario's condominium sector has experienced remarkable growth and change. There is now considerable variety in both the size and type of condominium buildings.

Today, condominiums account for half of all new homes built in Ontario. With roughly 589,000 units in the province, about 1.3 million Ontarians call a condominium their home. As the sector has expanded, so has this housing option, the size and complexity of the market, and the number of people affected. Moreover, the issues today are not only legal or technical in nature. Increasingly, they are about relationships within the condominium sector—tensions between owners, other residents, board members, condominium managers, developers, lawyers and others.

Like good neighbours, stakeholders must learn to work together to achieve common goals.

Real solutions to these tensions will require a mix of new or updated rules, better information and a broad array of tools to help solve problems. But they will also require effective management of relationships within the condominium sector itself, as well as individual condominium communities. Everyone has a role to play. Owners and others with a stake in the condominium sector must see themselves as members of a single community who share common interests. Like good neighbours, they must learn to work together to manage their differences in order to achieve their common goals.

A new approach was needed to understand this new environment. In response, the Ministry of Consumer Services has provided funding to Canada's Public Policy Forum to lead an innovative public engagement process to review and recommend changes to the Condominium Act. Working with MASS LBP, which specializes in citizens' panels, the Forum is engaging condominium owners and

other condominium community stakeholders in a three-stage, 18-month review process that will identify issues, consider options, and propose and confirm an action plan for renewal.

The findings from the engagement process so far suggest that new tools are needed not only to strengthen how condominium corporations are managed and governed, but also to help owners and other condominium sector participants build a stronger sense of shared responsibility for the resilience and well-being of their communities.

Taking a Collaborative Approach

This report contains the findings from Stage One of the three-stage review process. Stage One was launched in September 2012 and concluded with the release of this report in January 2013. It involved four engagement or discussion streams:

- Minister's Public Information Sessions provided information about the review and convened town-hall forums for over 500 participants in five Ontario communities;
- A Residents' Panel assembled 36 representative condominium residents from across the province for three full-day sessions to learn more about condominiums, discuss issues and propose solutions;
- Stakeholder Roundtables brought together 25 stakeholders from across the condominium community for four full-day sessions to identify issues and discuss solutions; and
- The entire condominium community was invited to provide input, resulting in over 400 emails and letters, including approximately 180 formal submissions.

While all four discussion streams were diverse in their representation, similar issues emerged, including how challenging it can be to understand the Act itself.

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Condominiums Based on Rules and Community Values

The Condominium Act is “framework” legislation, which means it sets the parameters within which individual corporations can make by-laws and rules to shape their community. It is also “administrative” in the sense that compliance with the Condominium Act or the corporation’s by-laws is not “policed” by the provincial government the same way as, say, taxation. Instead, condominium corporations, led by elected boards of directors, govern their community members according to the framework set out in the Condominium Act. In Stage One, this governance arrangement was the subject of much discussion.

Residents identified seven values for a revised Act: well-being, fairness, informed communities, responsiveness, strong communities, financial sustainability and effective communication.

In particular, some owners were concerned about how condominium communities manage and resolve disputes. When boards, managers or other owners fail to comply with the Condominium Act, they said, there is no reliable and cost effective way to enforce the rules: the Condominium Act lacks “teeth”. However, others replied that most noncompliance issues, such as breaking a rule or by-law, will be more effectively managed through better information, communication, or mediation, rather than through more enforcement tools. They agreed that effective enforcement is necessary, but stressed that relying too much on this approach can erode trust and create new and even deeper tensions within the community.

A second key issue concerned the rights and responsibilities of condominium owners. When someone buys a condominium, they not only have legal rights and responsibilities, they also join a community. These community responsibilities go beyond paying monthly fees for upkeep of the building. They extend to the well-being of the community as a whole. A consistent finding of both the Residents’ Panel and the Stakeholder Roundtables has been that owners need to

more fully understand their responsibility to contribute to effective community governance, such as, by attending their condominium’s annual general meetings (AGMs).

As a result of the Residents’ Panel’s discussion of issues such as these, Panel members proposed a list of seven basic values they felt should be supported by a revised Act:

- Well-being
- Fairness
- Informed Community Members and Stakeholders
- Responsiveness
- Strong Communities
- Financial Sustainability
- Effective Communication

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

Key Issues and Potential Solutions

The issues and solutions raised in the four discussion streams can be grouped into six basic categories: governance, dispute resolution, financial management, consumer protection, the qualifications of condominium managers and issues outside the Condominium Act.

Stage One has been about identifying key issues and solutions and exploring where agreement and disagreement lie. While important differences and disagreements remain, when all is said and done, there is a remarkable degree of agreement among residents and other stakeholders on what the key issues are and what needs to be done to solve them.

The following is a brief summary of the issues and potential solutions identified during Stage One:

- **GOVERNANCE:** Condominium boards of directors, particularly first-time directors, need training and support. Boards need to be more diligent in informing and educating their own members and the owners about everything from community rights and responsibilities to the financial state of their condominium. Boards also need to take steps to increase their responsiveness, transparency and accountability. In particular, corporate and governance documents (such as by-laws or board meeting minutes) must be made more readily available and information must be accurate, accessible, up to date, and complete. For their part, owners need to be more engaged and accept a greater degree of responsibility for the good governance and management of the community, including participating in AGMs.

Condominium boards, especially first-time directors, need training and support.

- **DISPUTE RESOLUTION:** Although a more effective and efficient means to enforce the rules and responsibilities set out in the Condominium Act is needed, this is only one part of a high-quality system for resolving disputes. Participants agreed that issues could often be resolved quickly and amicably if they had better access to the right information, informed and impartial advice, and reliable, trusted mediation. Such tools likely will need to be incorporated into a more effective dispute resolution system for the future. However, this raised further questions around how such a system would work and be managed. Many felt that some form of independent, authoritative agency or organization is needed to oversee the development and implementation of these tools and processes.
- **FINANCIAL MANAGEMENT:** Reserve funds (funds that owners pay into as part of their common expense contributions for major repairs and replacement of common elements and condominium assets) must be adequately funded through contributions that are based on appropriate, standardized studies.

The rules around the use of operating funds need to be revisited and adjusted. In some cases, more flexibility may be appropriate but, if so, it should be very clear how and where funds can be used and how owners will be informed of this. Owners need access to tools and information that will keep them well informed on how their monthly contributions (and possible special assessments)¹ are set and used. Such information must be in a form that is accessible, timely and reliable.

- **CONSUMER PROTECTION:** Documents related to the sale of a condominium unit should be supported by plain language summaries that explain the key information buyers need to make an informed choice on whether to purchase. The full cost of purchasing and living in a condominium must be fully transparent. All costs should be included in the first year. Any exceptions should be required to meet stringent criteria, including disclosure to ensure consumers can make an informed decision.

A higher standard of skills and training is needed for condominium managers.

- **CONDOMINIUM MANAGER QUALIFICATIONS:** A higher standard of skills and training is necessary for managers and management firms. This almost certainly involves mandatory knowledge and may also require regulation of the industry by government, or some organization acting on its behalf.
- **ISSUES OUTSIDE THE CONDOMINIUM ACT:** Participants in all four discussion streams also raised issues that went beyond the scope of the Condominium Act and that, in various ways, affected other pieces of legislation. These included concerns around property taxes, condominium conversions, insurance rates, tenant rights and responsibilities, as well as industry trends and power imbalances in the condominium sector. These comments and proposals have been duly noted and shared with officials in the appropriate ministries.

¹ Special assessments are additional (typically one-time) common expense charges that are sometimes used by condominium corporations to pay for unplanned expenses or budget shortfalls.

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For each of these areas, it was recognized that there is great diversity in the size and scope of condominiums in Ontario. Future work would need to account for these differences and not follow a “one-size-fits-all” approach. For example, the qualifications of a part-time manager of a six-unit rural residential condominium might need to be different from those of a manager for a mixed-use, urban condominium tower housing hundreds of owners.

Conclusion

Providing the tools and supports needed to strengthen transparency and accountability of the boards, ensure better management from the managers, and encourage greater participation from owners will be challenging.

Nevertheless, if there is an overall conclusion from this Findings Report, it is that we should be encouraged by how much agreement exists across the condominium community on the issues and solutions. There is still a long distance to travel and no reform package will please everyone or solve all the issues, but a good one should address a critical mass of the issues and garner support from across the community. On this front, there has been real progress.

With the submission of this Findings Report to the Ministry of Consumer Services, Stage One of the review process is complete. Stage Two will begin in March 2013 when groups of experts in condominium issues (including owners) will be convened to review the findings from this report. Based on the issues, proposals and arguments it contains, the experts will work together to develop a detailed set of options for renewal of the Condominium Act. In Stage Three, which will begin in the fall of 2013, the options will be reviewed and validated by condominium owners and other stakeholders, after which they will be presented to the government and the condominium sector.

For more information and updates on this project, including supporting documents please visit [xxx](#)



INTRODUCTION

Ontario's Condominium Act Review

Ontario's *Condominium Act, 1998* (the Condominium Act) is the responsibility of the Minister of Consumer Services³. It governs the rights and responsibilities of condominium owners, developers, corporations and boards of directors. It also establishes a number of protections for condominium buyers and owners.

Since the Condominium Act was last renewed over a decade ago, the sector has gone through a period of remarkable growth and diversification. Today, condominiums account for half of all new homes built in Ontario. With roughly 589,000 units in the province, about 1.3 million Ontarians call a condominium their home. And that number continues to rise.

Along with these changes, there are new issues and concerns, which, in turn, have led to calls for a review of the existing legislation. Other provinces are already engaged in such exercises, including British Columbia, Alberta and Manitoba. Nova Scotia has recently completed such a review.

In June 2012, when the Ontario government launched its process to review the Condominium Act, the Ministry opted for an innovative approach to reform. It is working with Canada's Public Policy Forum and MASS LBP to engage members of the condominium community in an 18-month, three-stage public engagement process.⁴

As the sector has expanded, so have the size, complexity and number of condominium community stakeholder groups within it, including owners, boards, residents, developers, managers, lawyers, real estate agents and consumer advocates. As a result, many of the issues surfacing today are increasingly linked to tensions between owners or other stakeholders.

Real solutions to these tensions will likely require a mix of new or updated rules, better information and tools to help solve problems. But they will also require effective manage-

ment of relationships with the condominium sector and individual condominium communities. Everyone has a role to play. Owners and others with a stake in the condominium sector must see themselves as members of a single community with common interests, as well as conflicting ones. Like good neighbours, they must learn to work together to manage their differences in order to achieve their common goals.

Public engagement places a strong emphasis on dialogue and discussion as a critical step in achieving this. It is designed to provide new ways for the members of the community to engage one another on the issues and options for change. Through the review process, these groups will work together, and with the Ministry, to explore concerns, find common ground and propose solutions. The overarching goal is to build a greater sense of shared ownership of their communities, and a shared responsibility for their management and well-being.

A Description of the Review Process

The Condominium Act Review Process is based on the Public Policy Forum's Public Engagement Framework and includes three basic stages:

- **Stage One (Fall 2012): gathering views on issues and options:** In Stage One, participants had various forums in which to express their views on issues and to engage in discussion of them. The goal was to identify key issues, propose possible solutions, explore how far agreement may exist between different groups, and assess where the differences lie.
- **Stage Two (Winter/Spring 2013): using dialogue and deliberation to transform options into well-defined solutions:** In Stage Two, subject matter experts will build on the findings from Stage One, undertaking a more in-depth examination of the issues raised and considering the feasibility of the options proposed, such as their effectiveness, cost and impact on other policy areas. The experts will

³ MCS jointly administers the Act with the Ministry of Government Services (MGS). MGS, through ServiceOntario, is responsible for all aspects of registration of condominium documents and creation of condominium corporations.

⁴ The Public Policy Forum brings over 20 years of experience in enhancing stakeholder relations and leading coordinated efforts across sectors to improve public policy in Canada. Don Lenihan, Vice-President of Engagement at the Forum is an internationally recognized expert on public engagement. Throughout his career, he has developed and led many research and engagement activities, including the recent *Public Engagement Project*, a two-year research and capacity-building initiative that involved nine federal, provincial, and territorial governments, the Government of Australia, and the City of Hamilton. Culminating in the book *Rescuing Policy: The Case for Public Engagement*, the project examined the role of public engagement in supporting collaborative governance and citizen-centred business processes.

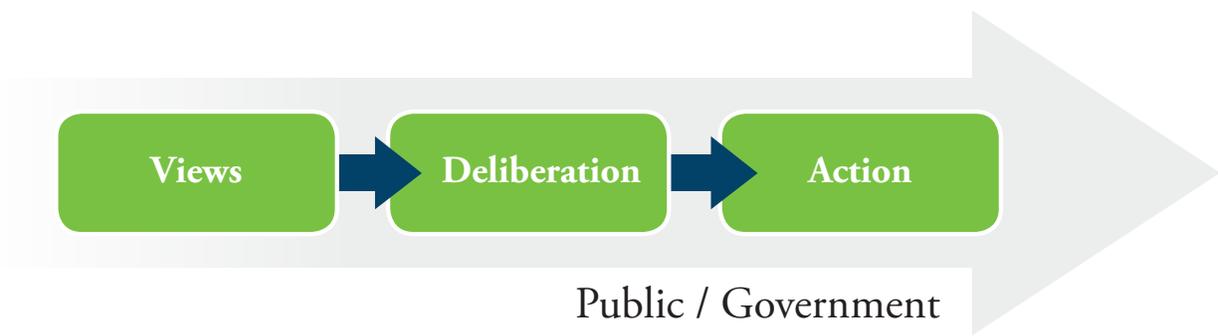
MASS LBP also brings significant expertise in public engagement. In the past five years, MASS has successfully completed fifteen different citizen engagement projects in Ontario. Reference Panels have been used extensively in the public health sector, including hospitals and Local Health Integration Networks, as well as in projects with both regional and municipal governments. By combining Citizens' Reference Panels and Civic Lotteries, MASS LBP's approach to public engagement creates a process that represents the interests of the wider public and enjoys a high degree of public legitimacy.

INTRODUCTION

develop a detailed action plan and recommendations based upon these discussions and the findings from Stage One.

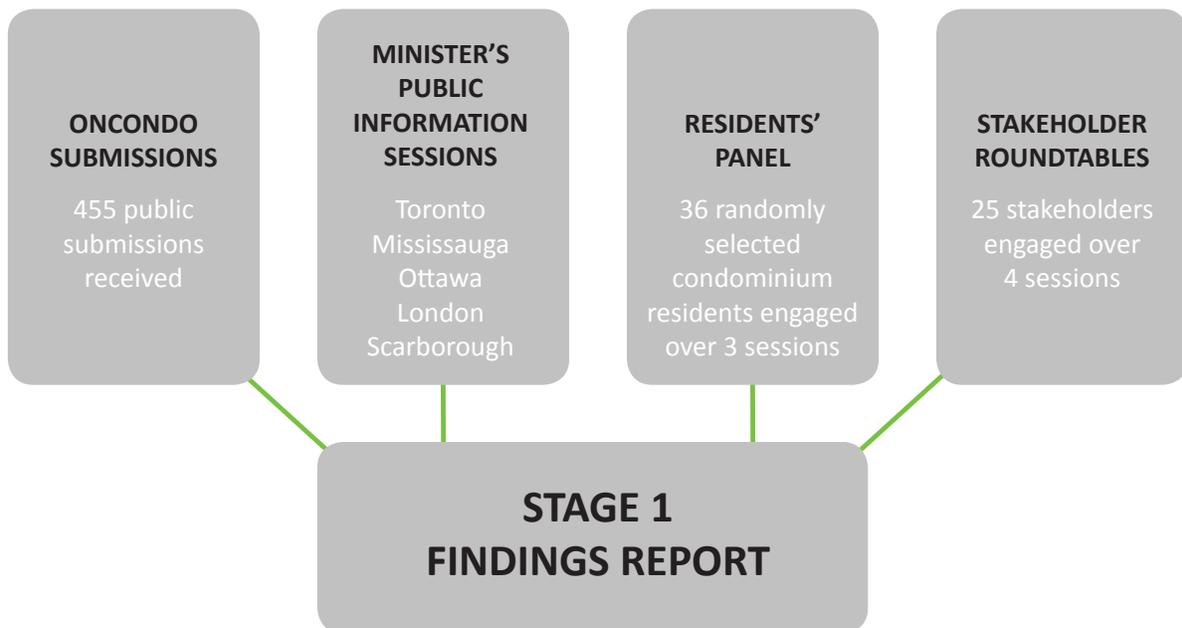
- **Stage Three (Fall 2013): determining key actions for implementation:** Stage Three will provide residents, stakeholders and decision-makers an opportunity to examine and validate the proposed options from Stage Two.

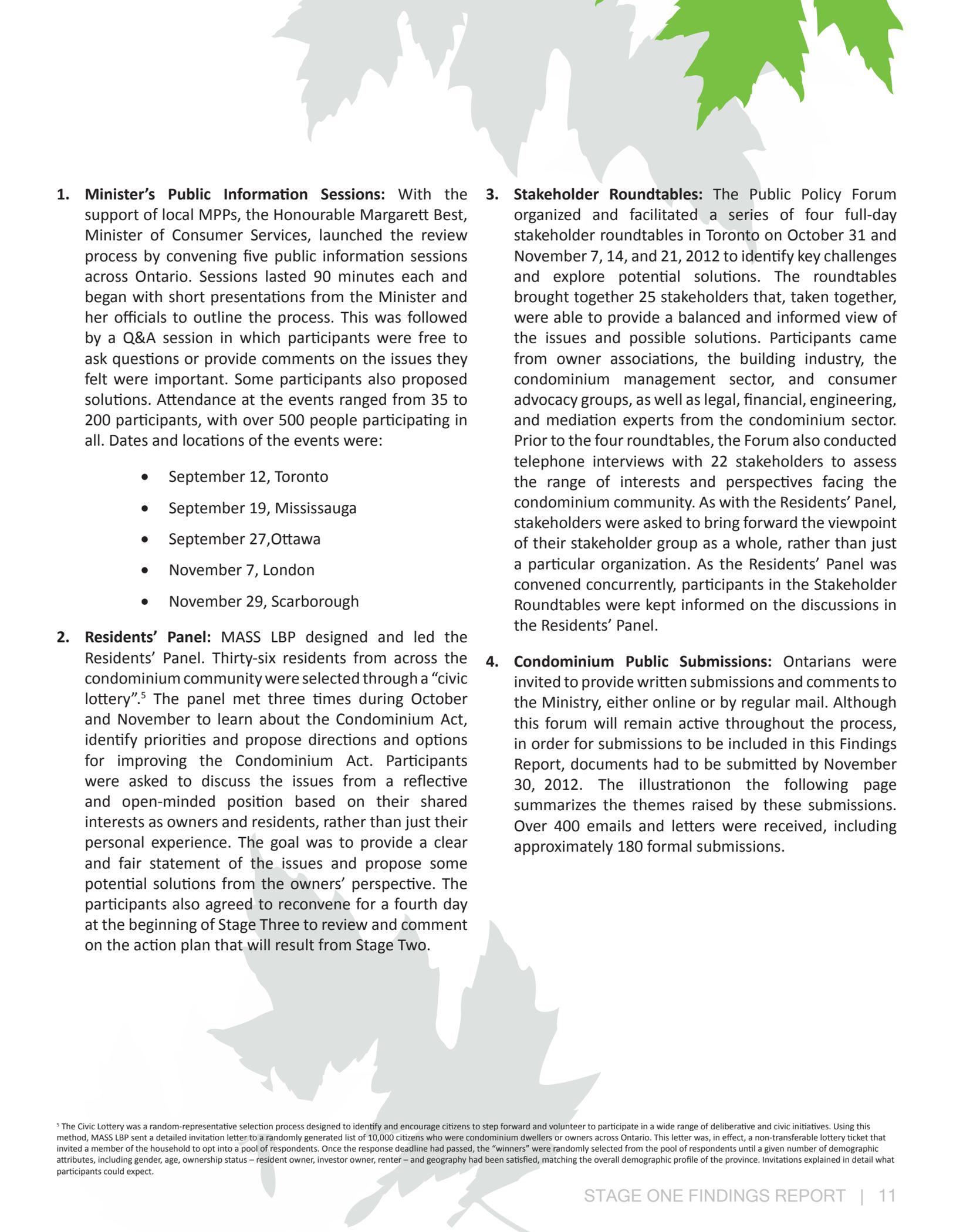
The following diagram represents the three stages of the process, with government and the public working together in partnership throughout:



Stage One: Gathering views on issues and options

This report contains the findings from Stage One of this three-stage process. Stage One included four separate discussion streams and was designed to ensure the condominium community had a range of ways to provide input into the process. The following diagram identifies the four streams, along with their participation rates:

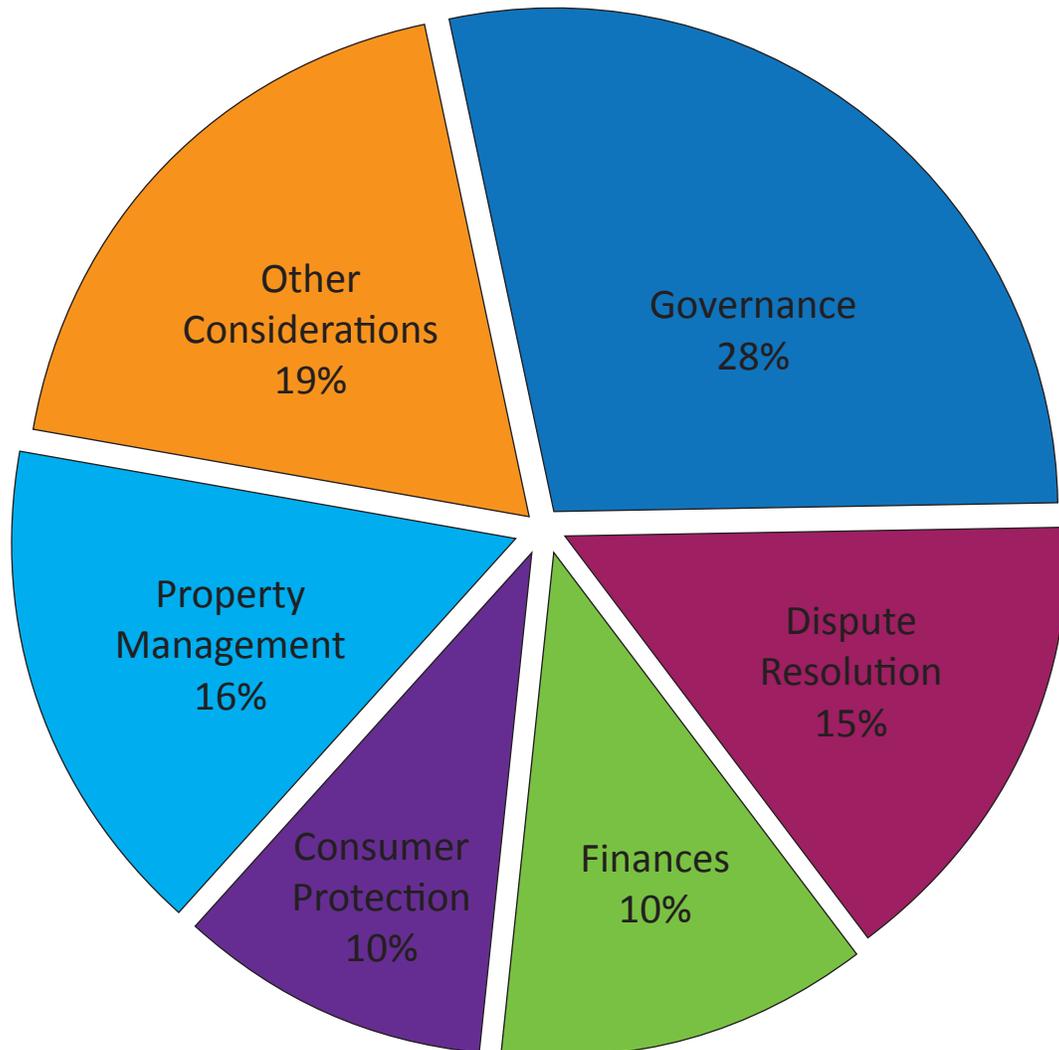


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- 1. Minister's Public Information Sessions:** With the support of local MPPs, the Honourable Margaret Best, Minister of Consumer Services, launched the review process by convening five public information sessions across Ontario. Sessions lasted 90 minutes each and began with short presentations from the Minister and her officials to outline the process. This was followed by a Q&A session in which participants were free to ask questions or provide comments on the issues they felt were important. Some participants also proposed solutions. Attendance at the events ranged from 35 to 200 participants, with over 500 people participating in all. Dates and locations of the events were:
 - September 12, Toronto
 - September 19, Mississauga
 - September 27, Ottawa
 - November 7, London
 - November 29, Scarborough
 - 2. Residents' Panel:** MASS LBP designed and led the Residents' Panel. Thirty-six residents from across the condominium community were selected through a "civic lottery".⁵ The panel met three times during October and November to learn about the Condominium Act, identify priorities and propose directions and options for improving the Condominium Act. Participants were asked to discuss the issues from a reflective and open-minded position based on their shared interests as owners and residents, rather than just their personal experience. The goal was to provide a clear and fair statement of the issues and propose some potential solutions from the owners' perspective. The participants also agreed to reconvene for a fourth day at the beginning of Stage Three to review and comment on the action plan that will result from Stage Two.
 - 3. Stakeholder Roundtables:** The Public Policy Forum organized and facilitated a series of four full-day stakeholder roundtables in Toronto on October 31 and November 7, 14, and 21, 2012 to identify key challenges and explore potential solutions. The roundtables brought together 25 stakeholders that, taken together, were able to provide a balanced and informed view of the issues and possible solutions. Participants came from owner associations, the building industry, the condominium management sector, and consumer advocacy groups, as well as legal, financial, engineering, and mediation experts from the condominium sector. Prior to the four roundtables, the Forum also conducted telephone interviews with 22 stakeholders to assess the range of interests and perspectives facing the condominium community. As with the Residents' Panel, stakeholders were asked to bring forward the viewpoint of their stakeholder group as a whole, rather than just a particular organization. As the Residents' Panel was convened concurrently, participants in the Stakeholder Roundtables were kept informed on the discussions in the Residents' Panel.
 - 4. Condominium Public Submissions:** Ontarians were invited to provide written submissions and comments to the Ministry, either online or by regular mail. Although this forum will remain active throughout the process, in order for submissions to be included in this Findings Report, documents had to be submitted by November 30, 2012. The illustration on the following page summarizes the themes raised by these submissions. Over 400 emails and letters were received, including approximately 180 formal submissions.

⁵ The Civic Lottery was a random-representative selection process designed to identify and encourage citizens to step forward and volunteer to participate in a wide range of deliberative and civic initiatives. Using this method, MASS LBP sent a detailed invitation letter to a randomly generated list of 10,000 citizens who were condominium dwellers or owners across Ontario. This letter was, in effect, a non-transferable lottery ticket that invited a member of the household to opt into a pool of respondents. Once the response deadline had passed, the "winners" were randomly selected from the pool of respondents until a given number of demographic attributes, including gender, age, ownership status – resident owner, investor owner, renter – and geography had been satisfied, matching the overall demographic profile of the province. Invitations explained in detail what participants could expect.

Themes Covered by ONCONDO submissions

NOTE: Individual submissions often cover several themes



Taken together, the individuals and organizations participating in Stage One are a diverse and highly representative cross-section of the views and interests within the community. As such, this Findings Report provides a reliable and accurate guide to the issues facing the condominium community, and its proposed solutions.

SETTING THE CONTEXT

Objectives

This Findings Report has two main objectives. First, it will serve as a starting point for Stage Two and will provide direction for their discussions. Second, it will give the broader condominium community an accessible overview of the issues and options raised in the four discussion streams from Stage One.

We hope the report will provoke further reflection and debate among condominium owners, renters, developers, managers, and even Ontarians who may not live in a condominium but who wonder about condominium living. The key message is that the discussion is not over and people should remain engaged.

Community Values and an Emerging Community Vision

Since the current Act came into effect in 2001, Ontario's condominium sector has gone through a period of remarkable growth and development, especially in the Greater Toronto Area and other urban centers. The number of condominium buildings has multiplied, transforming the landscape.

The array of glass towers along Toronto's waterfront may be the most dominant example, but it is hardly the only one. Cities across the province contain rapidly growing condominium communities, populated with properties of all shapes and sizes, including high and low-rise structures, townhouses, warehouse conversions, and buildings with a mix of residential, commercial or industrial space.

This diversity of structures can be confusing. Outside the condominium community, people often associate condominiums with high-rise apartment buildings. In fact, a condominium is not a type of structure at all, but rather a form of ownership that can involve virtually any kind of housing, including high- or low-rise apartments, townhouses or stacked townhouses, and even detached or semi-detached houses. As a form of home ownership, condominiums have two distinctive features:

- Condominiums combine private ownership of individual residences (referred to as “units”) with shared ownership of most or all of the other elements of the property, such as the hallways, entrances and courtyards (collectively referred to

as “common elements”).

- Condominiums are self-governing communities with rules and by-laws to guide their operations and business affairs.

Taken together, these two features define condominiums as a unique ownership option. They are also the source of many of the issues discussed in this report. For example, uncertainty over how to manage shared elements of the building is a key source of tension in many communities.

But if shared ownership and self-governance give rise to some difficult issues, they also generate some hopeful expectations about condominium living. The Residents' Panel offers a particularly helpful way of bringing this out. It reached agreement on seven values that its members believe should guide the development of a modernized Act:

- Well-being
- Fairness
- Informed Community Members and Stakeholders
- Responsiveness
- Strong Communities
- Financial Sustainability
- Effective Communication

These values set some basic benchmarks for the kinds of improvements condominium owners want from the review process. They provide a coherent and persuasive blueprint for the kinds of communities that condominium owners want to live in. The seven values serve as a compelling declaration of the kind of relationships owners expect to have with boards, managers, and with each other, and outline a vision for the future that defines what owners find distinctive and attractive about condominium living—what they expect from it.

Although these values have been defined by owners, they are not unique to owners. Notwithstanding their differences and disagreements on specific issues and their solutions, the four discussion streams make clear that there is a remarkable amount of agreement among the other stakeholders on very similar values and, consequently, on the emerging vision of what condominium communities are seeking to become.

SETTING THE CONTEXT

Finally, this set of values suggests that, if the review process aims to ensure the Condominium Act meets future needs of the condominium community, this should include providing the community with the tools it needs to fully articulate and realize this vision.

The Community Contract

Because buying a condominium means agreeing to shared ownership of much of the property, when someone buys a condominium they are also joining the community. As a member, they have both rights and responsibilities, not only with respect to their new home, but also with respect to the community and the common elements. For example, owners have a right to vote for members of the board of directors, but they also have a responsibility to contribute monthly fees for the upkeep and repair of the common elements and operation of the corporation.

A recurring theme in the four discussion streams was that owners often fail to grasp the full nature of the rights and responsibilities that come with the decision to buy a condominium. For example, if asked, most would certainly agree that they have joined a community. But when it comes to participating in an AGM, they may see this less as a duty or responsibility than a kind of community event, which they are free to attend or not.

From the residents' viewpoint, they may have good reasons for not attending. They may be snowbirds who are away for the winter, or professionals with a hectic schedule. To such people, condominiums often look like, and may even have been promoted as, a worry-free solution to home ownership. This, they may say, is why they bought a condominium.

Unfortunately, things are not so simple. As members of a community, their responsibilities go beyond simply paying their monthly fees. Whether they realize it or not, joining a condominium community involves a commitment to “doing your part” to ensure what the Residents' Panel refers to as the well-being of the community. This is about more than the repair and replacement of its assets. According to the Panel, it means “protecting and enhancing the health, safety, security, and accessibility” of the community. As the Panel members note in their summary report:

“Buyers don’t always understand they are buying into a communal undertaking, not simply buying an apartment. Residents and stakeholders in the condominium community are not sufficiently aware that good relationships lead to well-functioning condominiums.”

We can call these collective obligations, such as attending AGMs, the **community contract**.

The Enforcement Approach vs. the Community-Building Approach

The Condominium Act is “framework” legislation, which means it sets the parameters within which individual corporations can make by-laws and rules to shape their community.

The Act is also “administrative” in the sense that compliance with it or a condominium’s by-laws and rules is not “policed” by the provincial government the same way as, say, taxation. As self-governing communities, condominium corporations are expected to govern their own members from within the framework set out in the Act.

This administrative status of the Act was the subject of much discussion. In all four streams, some participants—mainly owners—saw this as the Achilles’ heel of the Act. A participant in the Minister’s Public Information Sessions summed up how many of them feel with the assertion that the real problem with the Act is that it has no “teeth”.

In this view, many condominium issues result from non-compliance with the Condominium Act (or a condominium’s by-laws and other governing documents), which may involve directors, managers or other owners. Because owners feel they have no reliable and cost-effective instrument to control such behaviour, they believe there is little they can do to ensure compliance. If the Condominium Act were backed up by a real enforcement mechanism, they conclude, offenders could be policed and many of these issues would be quickly resolved. Thus the ONCONDO summary report of submissions emailed or mailed to the ministry finds that “the lack of enforcement for clear cases of non-compliance was...mentioned in many of the submissions.” We can call the suggestion of giving the Condominium Act “teeth” to solve noncompliance the **enforcement approach**.



Some participants defended a different view. In the Stakeholder Roundtables a few participants questioned the teeth metaphor. To them, it suggested that there is a one-size-fits-all solution—enforcement—to what is really a complex and diverse issue. In their view, although values such as community and well-being require compliance, there are different ways to achieve it. Much depends on the circumstances.

For example, a Roundtable participant estimated that as many as half the problems in condominium communities begin with disagreements over money. Thus a tense relationship between an owner and the board might have started with a decision to increase monthly fees that the owner thought was unfair and which he/she therefore opposed. According to the participant, if an adequate reserve fund (funds that owners pay into as part of their common expense contributions for major repairs and replacement of common elements and condominium assets) plan had been in place, perhaps the issue would never have arisen. Or, if someone had been able to explain the situation to the owner in ways he/she could understand, perhaps that would have been the end of it.

If a key challenge of condominium reform is to promote compliance (and thereby strengthen community and well-being), this story suggests a number of important principles that could guide reform:

- **Big problems often have their origins in small things.** What starts as a simple misunderstanding can evolve into a downward spiral of frustration, anger and mistrust.
- **Enforcement is a reaction to something that has already gone wrong.** A better way to promote compliance is to *prevent* misunderstanding and conflict from happening in the first place. Good planning, conflict management and education could play a key role in this, if there are effective ways to put them into effect within a community.

- **Tough tools for effective enforcement are necessary, but they should be used sparingly.** Excessive use or abuse creates divisions, uncertainty, anger and resentment within the community.
- **Spirals can go upward as well as downward.** The right combination of values, rules, tools, leadership and goodwill can start an upward spiral that will increase cohesion, trust, community and well-being.

According to the participants who proposed these principles, a key challenge of reform is to consider how they might be put into practice within condominium communities. This would promote better compliance by working to prevent conflicts from arising in the first place. Let's call this the **community-building approach**. Most of the participants in the Stakeholder Roundtables viewed it as a better option for reforming the Condominium Act than the enforcement approach.

The summary of the Residents' Panel draws a similar conclusion in the section on Building Stronger Communities:

...the panelists offer a message that has not been highlighted in many other discussions concerning condominiums in Ontario – the importance of social capital...when people know each other in their building, it can help boost participation, diffuse and resolve conflicts, spread information and uncover creative solutions. They do not want the government involved in legislating tea parties and social hours, but they want to make sure that this issue is on the radar of policy makers and other stakeholders, and that those who set out to build social capital in their buildings are encouraged and supported.

The emerging consensus from Stage One is that the real challenge for the review process is to provide the tools and supports needed to put the community approach into practice by strengthening transparency and accountability from the board, ensuring better management from the managers, and encouraging greater participation from owners. All will be addressed in the next sections of this report, to which we can now turn.

ISSUES AND SOLUTIONS

The issues and solutions raised in the four discussion streams can be organized into six basic categories: **governance, dispute resolution, financial management, consumer protection, qualifications of condominium managers, and issues outside the Condominium Act.**

Governance

Inexperienced Directors

The Issues

Condominium corporations are self-governing communities. Unit owners elect their own “government”—the board of directors—which is then responsible for the affairs of the community and makes decisions on its behalf. Serving as a director is a challenging role. It involves decisions on a range of complex questions, such as financial planning, property maintenance, insurance claims and contracting. It also involves communicating with and reporting back to the members of the community.

Because condominium owners come from all walks of life, many directors have little or no previous experience on a board or with the issues boards must address. This is a risk for owners. It can lead to bad decisions on repairs, investments or the purchase of insurance. It can also make a director vulnerable to managers, lawyers, contractors or even other directors who are more experienced and who may try to take advantage of their inexperience.

What We Heard

- Participants in all four discussion streams were concerned about the lack of experience and training of directors, particularly first-time directors, and discussed ways to ensure they are better prepared for their role.
- Mandatory training was the option most frequently proposed and considered.
- All four discussions streams voiced strong support for new tools and opportunities to help ensure directors were better prepared to fulfill their duties effectively.

Proposed Solutions

- Establish more appropriate board eligibility requirements.
- First-time directors should be required to take at least one course to ensure a working knowledge of board procedures. This would include a discussion of rights/responsibilities, ethics and conflict of interest.
- Corporations should pay for training.
- Develop a code of ethics for board members.
- Develop a plain-language document on roles and responsibilities.
- Offer specialized courses, in addition to a more general curriculum.
- Provide educational opportunities online for directors.
- Require boards to follow standardized procedures for meetings.
- Have a paid financial expert attend monthly board meetings to provide another level of oversight for condominium managers.

Considerations

Concern was expressed in both the Stakeholder Roundtables and the ONCONDO submissions that raising the requirements for directors might discourage owners from running for the board. Still, there was support for mandatory training, especially in the Stakeholder Roundtables. The real question they felt that still needs to be answered is how much training is reasonable to require.

Abuse of Power

The Issue

Bad governance is not just a product of inexperience. In the Minister’s Public Information Sessions many participants told stories about boards that they say abuse their power. There were accusations of bullying, cronyism and kickbacks.



It is difficult to gauge just how widespread such problems are, but stakeholders from across the community agreed that they exist and must be addressed.

What We Heard

According to many owners the solution is what we previously called the enforcement approach: government should put some “teeth” into the Condominium Act so that it can be “enforced”. In the Stakeholder Roundtables, this issue was discussed at length and many participants favoured the community-building approach.

In particular, these participants argued that, whatever one means by “teeth”, there is no one-size-fits-all solution. For example, kickbacks, fraud and embezzlement are already dealt with under the Criminal Code. The Condominium Act is not the right vehicle to address such transgressions. Similarly, issues like discrimination fall under the Human Rights Code.

They did NOT mean to say the Condominium Act has no role in preventing crime or discrimination. They thought it does. But, in this view, the way it can best contribute to ending such practices is to propose reforms that, taken together, will make abuses of power more difficult to perpetrate within the condominium community. As we will see below, better management training and dispute resolution are key parts of this. So is better board governance. Participants in all four discussion streams had much to say about the kinds of solutions they thought would produce this result.

Proposed Solutions

- **TRANSPARENCY AND ACCOUNTABILITY:** Transparency and accountability were at the top of just about everyone’s list and access to documents was central to this discussion. Owners complained that they have trouble getting key documents such as the minutes from meetings. By all accounts, this should not happen. Steps therefore should be taken to ensure that such documents are easily accessible in a timely way. One popular suggestion was for corporations to create a password protected website on which all such documents would be posted in a timely way, though it was suggested this may be demanding for some corporations. It

was also suggested that these materials or brief summaries of them could be posted in common areas or distributed to owners.

- **AN EFFECTIVE SYSTEM OF PENALTIES FOR NON-COMPLIANCE:** A second option suggested that to ensure documents are accessible, meaningful penalties, such as personal fines, be imposed on board members or managers who fail to comply with requests for records. However, concerns were also raised that a manager’s time could be quickly consumed by unreasonable requests for large numbers of documents. A balance might be struck by establishing a standardized form and fee schedule for such requests, or a fee that kicks in at a certain threshold.
- **FINES TO ENHANCE ACCOUNTABILITY:** In the Stakeholder Roundtables, participants also discussed the possibility of the Condominium Act allowing for the imposition of fines as a further way of ensuring accountability. Such fines could be either: (a) by the board against a defaulting/breaching owner; or (b) against directors who breach their duties.
- **PROXIES:** If an owner is unable to attend a condominium meeting, he/she may fill out a form that names a “proxy” to represent the owner. Proxies can be designated: (1) to help constitute quorum at the meeting; and (2) to cast the owner’s vote for a candidate in an election. The abuse of proxies was a topic of much discussion. Participants called for improvements to the system, including a mandatory, standardized proxy form that would minimize opportunities for manipulation by ensuring the role assigned to the proxy holder is clear.
- **REQUISITIONED MEETINGS:** Requisitioned meetings are central to the accountability process. If 15% of owners sign a form calling for such a meeting to address certain issues of concern, the board must comply. This is a way of forcing boards to account for their actions when owners believe they are abusing their position or evading questions. Given the high number of renters in some condominiums,

ISSUES AND SOLUTIONS

and the degree of owner disengagement (see next section), some participants argued that the 15% requirement should be lowered to 10%. Others disagreed. They maintained that boards need some protection when making difficult decisions. They said 15% is already a very small percentage of the owners and lowering the threshold to 10% would simply encourage abuse by disgruntled owners.

- **POLICE CHECKS:** Some participants proposed that boards undertake a police check on prospective board members and managers to ensure that candidates have no criminal history that would make them unsuitable for the position.

Considerations

Participants in the Stakeholder Roundtables agreed that, if the community-building approach to compliance was to succeed, changes would be needed on a number of fronts and that the review process should be working to identify how changes in various areas will contribute to broad goals, such as greater transparency, accountability and responsiveness in the governance of the corporation.

Owner Disengagement

The Issue

The previous sections discussed the need for good rules, good tools and good directors, but good governance also requires something else. It requires good owners. At a minimum, good owners are those who fulfill their basic responsibilities to the community, such as showing up for AGMs to discuss the issues, participating in elections, and standing for election to the board. As is noted in the Residents' summary, "owners need to be prepared from the start to play productive roles in their condominiums." We previously called this the community contract.

When it comes to participation, however, there are worrying signs that, far from fulfilling this commitment, owners are increasingly disengaged. For example, fewer and fewer owners turn up for AGMs or other meetings. As a result, many condominiums have a serious problem just getting

quorum—the minimum number of participants needed to officially hold a meeting—let alone finding new recruits to fill board positions.

What We Heard

Participants offered several explanations for this trend:

- **FAILURE TO UNDERSTAND THE COMMUNITY CONTRACT:** Many owners do not really understand that buying a condominium is buying into a community with rights AND responsibilities—the community contract. They see the condominium-lifestyle as one that frees them from the responsibilities that come with owning a house.
- **INVESTORS:** One view is that the trend is tied to the explosion of investors. Many investors do not live in the same building or city as their units, or even in the same country, so they do not attend condominium meetings. In addition, investors tend to have a different view of the community than owner-residents or even renters. The unit is not their home, it is an investment.
- **RENTERS:** Where there are investors, there are generally renters. This too adds to the complexity. Renters do not have the same status or rights as owners and these differences are not always clear or well understood. In communities where renters are a majority, boards may find it very difficult to gather enough people for an AGM or to stand for office. The existence of different types of condominiums (mixed use/shared facility/phased in) adds even more complexity to the mix.
- **A DOWNWARD SPIRAL:** Finally, there may be a downward spiral forming where owners become frustrated by the lack of participation of others and so eventually give up trying, which only reinforces the trend toward disengagement, lack of accountability and tense governing circumstances.

Proposed Solutions

A number of measures were proposed to deal with owner disengagement that, if combined with other reforms in this report, should help ensure meaningful progress on the issue:

- **DEFINE A STATEMENT OF RIGHTS AND RESPONSIBILITIES:** One idea was to develop a statement (suggested names included a “Charter”, “Code” or “Declaration”) of owners’ rights and responsibilities. Many owners have very little knowledge of these. A clearly written, single-page statement could be developed and possibly posted in an accessible common area (such as a lobby) where it would be visible. It could also be included as a covering document in the purchase documents. It would define high level rights and responsibilities for owners and serve as a succinct statement of what’s reasonable/unreasonable. Although such a statement would not be enforceable, it could be a highly symbolic document that serves as a powerful educational tool.
- **GIVE OWNERS MORE VOICE:** Owners often say they do not attend meetings because they have no control over what happens at them. The agenda is set by the board with little prior notice, so if an owner has an issue he/she wants discussed, that person is at the mercy of the board. If owners are to be engaged, their participation must be meaningful. Many have suggested that boards should provide earlier notice of meetings and allow more input into agendas from owners.
- **CULTIVATE THE RIGHT GOVERNANCE CULTURE:** In one of the Stakeholder Roundtables, there was an interesting exchange on the culture of condominium governance. Suppose an owner’s dog slightly exceeds the maximum allowable weight specified in the rules. Should the board make an exception or ban the pet? A participant reported on a case that had gone to court. While the judge agreed that the owner had violated the Condominium Act by making unauthorized changes to common elements, he replied that condominium corporations are also communities and that a board has the responsibility to preserve this spirit. Sometimes, this requires compromise, goodwill and allowing for exceptions, rather than living by the letter of the law. Although the corporation was successful, the judge then denied the corporation its full legal costs. According to the participant, there is a very timely and important lesson here for condominium boards: good governance is about more than making rules. It is about working to realize the aspirations of the people in the community. If so, the seven primary values proposed by the Residents’ Panel might be a positive guide for directors who are thinking about their role in the community.
- **SUPPORT STRONGER SOCIAL RELATIONSHIPS:** The Residents’ Panel highlighted the important role social capital plays in supporting functional condominiums. Their feedback suggests that when people know each other in their building, it can help boost participation, diffuse and resolve conflicts, spread information, and uncover creative solutions. While they did not want government to micromanage such efforts, they thought it might be able to provide support for tools to help promote this.
- **ENSURE EFFECTIVE COMMUNICATIONS:** In one of its recommendations, the Residents’ Panel noted that AGMs are not adequate mechanisms for communication between owners and directors. They had several suggestions for how to improve communications and to help ensure that owners are not only informed, but engaged:
 - The Condominium Act should emphasize the importance of effective and open communication.
 - All condominium corporations should be required to develop and maintain open, transparent, frequent and timely communication strategies.
 - Taking into account the size and composition of a community, each corporation should use a variety of platforms and tools to communicate effectively with different owners.
 - Corporations should establish an independent office or designate a volunteer dedicated to communicating residents’ concerns (anonymous or not) to the board.

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- **MARKET THE RIGHT MESSAGE:** In both the Residents’ Panel and the Stakeholder Roundtables, participants argued that some developers’ marketing strategies contribute to the problem of disengagement. Developers can portray the condominium lifestyle as an easy, carefree arrangement with no responsibilities. According to one participant, this is not only misleading, it is harmful. Developers’ associations, she said, should encourage their members to take a responsible approach to marketing their product.

Considerations

Most likely, all the factors mentioned in the *What We Heard* section are at work in the trend toward owner disengagement. However, there is no single solution. Overcoming this trend will take time, effort and a range of initiatives, including, perhaps, those listed above.

Dispute Resolution

Improving Dispute Resolution

The Issue

In condominium communities, misunderstanding and misinformation are major sources of tension and conflict. In particular, many disputes begin with a misunderstanding about roles, rights or responsibilities. Nor is misunderstanding confined to owners. It also affects directors and managers. Participants in all four discussion streams noted that disputes could be resolved more quickly if a reliable, trusted party were there to advise the parties on the Condominium Act or help them understand the by-laws. In fact, education is one of the most promising tools in the reform toolbox, which is reflected in many of the proposals in all five issue areas. The Residents’ Panel lists Informed Community Members and Stakeholders as one of its seven key values, explaining it as follows:

Community members and stakeholders (including residents, board members, lawyers, realtors and condominium managers) should actively and consistently acquire the knowledge and develop the skills needed to effectively fulfill their respective roles... to be active and informed community

members and to protect and enhance their quality of life in condominiums.

If dispute resolution is at the centre of the issues condominiums are struggling to resolve, then education is at the centre of dispute resolution.

Nevertheless, 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.

What We Heard

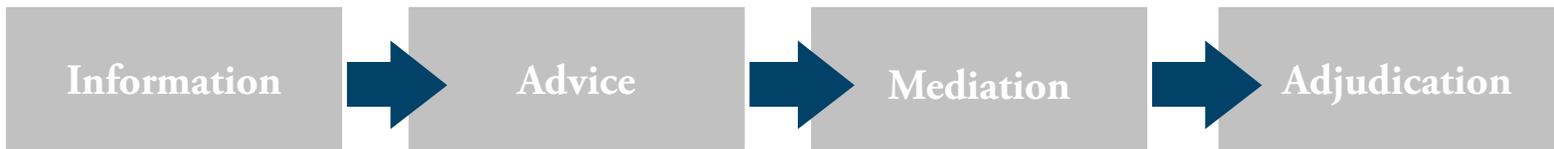
The subject of dispute resolution came up often in all four discussion streams. The exchanges were passionate and sincere, as participants proposed and debated a variety of options to improve the system.

- Many participants felt that mediation and arbitration, as they are now practiced, often do as much to aggravate conflicts as to resolve them. Owners, in particular, are unhappy with the system. The Residents’ Panel calls for measures to address what its members see as “a power imbalance between owners and boards of directors.” Similarly, many participants in the Minister’s Public Information Sessions said that, in a dispute between an owner and the board, they felt the process clearly favours the board in the following ways:
 - Boards of directors control access to key documents, which can make it difficult for an owner to get access to documents they need to support their case.
 - The manager reports to the board, which means the manager may be perceived to favour or may in fact favour the position of the board in a dispute.
 - Boards are protected by incorporation and director’s liability insurance.



- Boards have the financial resources of the condominium and the condominium lawyer at their disposal, while owners who wish to challenge a board may quickly find their legal costs mounting as the process drags on.
- In the Stakeholder Roundtables, this discussion went even further. Participants eventually agreed that there is no one-size-fits-all solution for resolving disputes. Different issues, they said,

require different tools. By the end, a model was beginning to emerge in which the various issues and tools were arranged along a continuum that moves from the least to the most difficult issues. The model divides dispute resolution into the four basic stages outlined in the diagram below:



Proposed Solutions

I. INFORMATION

- **ACCESS TO INFORMATION:** The first stage on the continuum is access to information. This includes tools that provide owners, managers and directors with quick, reliable, free (or low cost) information about the Condominium Act, the meaning of unusual or difficult by-laws of a particular corporation, and other relevant topics. The main tool for providing this service would likely be a website (and possibly a 1-800 number) that includes access to an expert who can answer questions, much like technical help lines for computers and software. Participants felt many issues would be quickly laid to rest if this service was readily available and community members knew where to go to access it. As the Residents’ Panel reports, “We found out that there are already ways to solve some of our concerns, if only we had known where to go to get the necessary information in the first place.”

II. ADVICE

- **THE DISPUTE RESOLUTION OFFICER/ OMBUDSPERSON:** 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.

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Hopefully, the DRO would bring many cases to a speedy resolution. However, if one or both of the parties was unsatisfied with the advice, the DRO could advise them on what their next step should be. For example, the DRO could propose mediation but, if mediation was unlikely to succeed, he/she might advise the parties to move directly to adjudication, that is, a decision by someone with authority to make such a decision, such as a court or arbitrator.

Participants disagreed on whether a DRO should be able to impose mediation on the parties. Some argued that, as long as a party is willing to risk the consequences, legal action should always be an option. In any event, they said, mediation is unlikely to succeed if both parties do not participate willingly. Others worried that this would give boards an advantage over owners, as boards might be tempted to move straight to legal action, knowing that most owners lack the resources to carry on a long and expensive fight.

While the DRO idea garnered considerable support in the Stakeholder Roundtables, a number of questions were left unanswered:

- How would the DRO be selected?
- If one party sought advice, would the other one have to participate?
- Under what authority would the DRO operate?
- Would a DRO need to be licensed?
- How would the service be funded? Should it involve a fee, both to support the practice and to discourage frivolous cases?
- Could the DRO require the parties to try mediation before court?

III. MEDIATION

- **MEDIATION:** The third form of dispute resolution is mediation. This is where a professional helps the parties work through their differences to try to arrive at a solution that is acceptable to both. As already noted, many owners feel that the current system favours the board, both on mediation and arbitration. In the online submissions and the Stakeholder Roundtables, other stakeholders also agreed with this view and called for measures to address the imbalance.

At the same time, 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. A number of suggestions were offered to achieve this, including:

- Educating directors and managers on the principles of good mediation, including issues around privacy and disclosure.
- Maintaining a list of qualified mediators that condominiums can engage.
- Finding ways to mitigate the cost of mediation, such as a fund set up by the corporation to support mediation.
- Focusing on early intervention.
- Ensuring that processes are completed in a timely way.

The question of whether mediation should be mandatory was not resolved.



IV. ADJUDICATION

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:

- **ARBITRATION:** This refers to a technique for the resolution of disputes whereby the parties agree to refer their issue to a third party—usually a professional—who will review the case and make a decision. The parties agree in advance to accept the finding. In the meetings, there was no clear consensus on whether arbitration for condominium disputes should be voluntary or mandatory, as both are possible.
- **TRIBUNAL:** Another option is the tribunal. Many owners and public submissions called for this mechanism. Some proposed the Ontario Landlord and Tenant Board as a possible model. In this approach, if a landlord and tenant cannot resolve their problems, they can file an application with the Board. The parties then have their problems addressed at a hearing. At the hearing, a member of the Board makes a decision on the application based on the evidence presented by the landlord and tenant. The British Columbia government has enacted legislation but has yet to implement a tribunal based on this model, which would operate online at a smaller cost to users than mediation. An official from the B.C. government was invited to give a presentation to the Residents' Panel on this proposed new system. The Residents' Panel recommend the Ministry of Consumer Services explore the proposed B.C. tribunal model and other best practices in dispute resolution, and then apply a similar approach in Ontario.
- **COURT ACTION:** The final option is, of course, court action. In this case, one of the parties files a claim against the other in court, which, eventually, will be settled by a judge. Many participants thought this mechanism should be a last resort.

Considerations

Notwithstanding their differences on some points, a number of principles and conclusions around the design of an adequate dispute resolution process were widely endorsed by participants:

- There is no one-size-fits-all solution. A satisfactory approach to dispute resolution must incorporate a variety of tools.
- A toolkit/information for owners should be easily available to help them identify where to go to find information to resolve disputes.
- The current system creates an imbalance of power between owners and boards, which must be addressed.
- Where information and advice are the goals, the process must be reliable, fast, free or inexpensive, and proceed without the participation of lawyers.
- Not only must mediators and arbitrators be neutral, the parties must *perceive* them to be neutral. Given the existing imbalance of power between boards and owners, clear steps should be taken to ensure the selection of the mediator or arbitrator does not favour either party.
- 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.
- When a board is pursuing legal actions against an owner, other owners are rarely informed of the corporation's legal fees, which can be substantial. While privacy concerns may be a consideration, in general, owners should be informed of these costs and the rationale behind their case.
- Even when a decision on a dispute has been made, it can be difficult to enforce. For example, suppose arbitration leads to a decision, but one party refuses to comply. The only recourse for the other

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party may be legal action—which lands the parties in yet another long and potentially costly process. Or suppose a board has been ordered to pay for repairs in an owner’s unit, but then claims it needs a special assessment to raise the funds. Such an excuse can be used to stall the payment indefinitely.

The point is that enforcement mainly relies on the court system, which can be long, expensive and uncertain. Options should be considered that strive to ensure decisions arrived at in mediation or arbitration will be acted on in a timely way. These may include some form of penalty for those who fail to comply or full compensation for any court costs incurred in pursuit of enforcement. In such cases, some participants from both the Residents’ Panel and the Stakeholder Roundtables felt personal liability for board members would be appropriate. The Residents’ Panel also called for best practices or guidance on how to heal a community after a dispute.

An Independent Agency or Organization to Work with the Community?

The Issue

The various stages of the dispute resolution continuum outlined above raise many questions around implementation. These issues will need to be explored more fully in Stage Two of the process. However, an idea that surfaced in all four discussion streams involves the creation of some kind of independent, authoritative agency or organization, possibly to oversee dispute resolution and other issues. Various versions have been championed by owner associations such as the Condominium Information Centre, the Canadian Alliance for Condominium Owners Rights and the Condominium Owners Association of Ontario. Some of the ideas around this proposal should be mentioned here.

Proposed Solutions

While there was no single, authoritative description of the proposed agency or organization or its role, generally,

it was viewed as an office of government—or sanctioned by government—that would perform some or all of the following tasks:

- Provide timely, free or low-cost, reliable information
- Act as an education champion for the condominium community
- Offer or mandate training for managers and directors
- License managers
- Maintain a public registry of credible, certified mediators
- Offer DRO services
- House a condominium tribunal

Considerations

While many participants seemed to support some form of such an agency —it was especially popular with owners— others were less convinced, although the depth of their skepticism varied with the list of tasks this office was assigned. In their view, a number of questions about the proposed office still need to be answered:

- An agency that is responsible for all or most of these tasks would be very costly. How would it be financed? While condominium owners might be willing to pay a small monthly fee to support it, would that be enough? Could it be supported by contributions from condominium corporations or developers?
- If a such an agency or organization were created, how many of these tasks would it really need to perform? Could some of them be performed as well or perhaps better by other members of the community?
- Must such an agency be a government office or could it be based on some form of delegated authority or other not-for-profit organization?

- Do some of these proposals threaten to make the work of condominium boards more difficult, risky or contentious and, if so, might they discourage owners from serving on boards?
- Would this agency encourage a more litigious or confrontational culture by creating an office that is viewed as a convenient problem solver and enforcer, thus relieving boards, managers and owners of the responsibility of working through their problems together?

neither planned for nor expected—and often cannot afford.

What We Heard

- The Condominium Act needs to ensure that corporations follow the repair schedule set out in the study or provide explanations for altering the plan.
- The Condominium Act needs to provide greater clarity about reserve funding requirements and how they are met.
- The Condominium Act needs to provide more specific and standardized requirements for a reserve fund study and provide more oversight of persons conducting the studies.
- Some question why all owners need to contribute to a reserve fund for future repairs that will only benefit future owners.

Proposed Solutions

All four discussion streams called for a revision of the rules regarding reserve funds to address this issue. There were a number of suggestions on how this should be done:

- **STANDARDIZE THE APPROACH:** The Condominium Act requires that new condominiums produce a reserve fund study within the first year after registration and every three years after that. However, the requirements of what must be included in a study are not specific enough. As a result, studies can vary greatly, depending on who does them and what the board agrees should be considered. There was strong agreement that a renewed Act should clarify the scope of reserve fund studies and standardize the approach.
- **DEFINE ADEQUATE FUNDING:** Closely related to the call for standardization, some participants from the Residents’ Panel, the Stakeholder Roundtables and the online submissions noted the Condominium Act fails to define what it means by “adequate” funding for reserve funds. This, they said, allows for manipulation. For example, taking a phased-in

Financial Management

In the four discussion streams the comments on financial management revolved around three central issues: (1) ensuring the adequacy of reserve funds; (2) ensuring good management of the common expenses; and (3) keeping owners informed.

Adequacy of Reserve Funds

The Issue

Every condominium corporation is required to set up a reserve fund to ensure it has the resources to make major repairs and replace the common elements and assets of the corporation as they age. These include such things as the roof, the exterior of the building, roads, sidewalks, sewers, heating, electrical, plumbing, elevators and recreational facilities.

Reserve funds are not new. They were first required under the 1990 *Condominium Act*⁶. The current Act built on this by requiring that planning for the fund include a reserve fund study. This has been widely recognized as a necessary step to improve the management of condominium communities. The support for this measure illustrates how good policy can contribute to community-building. However, it is also widely agreed that the requirements are inadequate. Today, many reserve funds are too small to meet the corporation’s needs. As condominiums age, owners are being called on to make significant contributions to pay for repairs that many

⁶ The *Condominium Act* being chapter C.26 of the Revised Statutes of Ontario, 1990, which was repealed and replaced by the *Condominium Act, 1998* on May 5, 2001.

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approach to adequate funding effectively backloads the real costs of building repair, which means owners at a later date are likely to be faced with special assessments. Factors such as inflation and service fees can also play an important role in the overall adequacy of a reserve fund. Participants argued that the Condominium Act should require that such factors be taken into account.

- **RAISE THE MINIMUM CONTRIBUTION:** At present, developers are not required to do a reserve fund study before transferring ownership of the building to the corporation. Instead, a minimum requirement for contributions has been set at 10% of the operating budget. This has become the benchmark that most reserve fund contributions are designed to meet. However, owners and experts alike agreed that the 10% figure is far too low and that a new minimum must be set.
- **REQUIRE DEVELOPERS TO PRODUCE A PLAN:** In the Stakeholder Roundtables and at the Minister's Public Information Session in London, participants said that this new minimum contribution should be combined with a further requirement that developers use their building plans to carry out a reserve fund study before the building is transferred and that contributions be based on this plan.
- **FIX PHASE-IN RULES:** The Condominium Act allows older buildings to phase in contributions for their reserve fund plan over 15 years. This has resulted in seriously inadequate funding for older buildings and should be corrected.
- **PROVIDE FLEXIBILITY IN THE RIGHT PLACES:** While participants generally agreed that the use of reserve funds should be tightly restricted, on some points they felt the rules were too limiting and should be more flexible. For example, funds should be accessible to pay for changes required by law, such as the installation of a wheel chair ramp. There should also be options to use reserve funds to purchase green technology that meets clearly established standards.
- **REPLENISH SHRINKING FUNDS:** Reserve fund contributions should be recalculated or topped up after unexpected expenses, say, as a result of major repairs or inflation. It was suggested that some threshold be set to trigger such an update or recalculation of the fund.
- **ALLOW BROADER OPPORTUNITIES TO INVEST FUNDS:** In the Stakeholder Roundtables, participants discussed whether the Condominium Act should allow broader investment opportunities for reserve fund monies, or even pooling of reserve funds similar to that found in social housing and offered by Ontario's Housing Service Corporation. With an estimated \$2.5 billion available for such a pooled fund, condominium corporations have the means to ensure a better rate of return with minimal risk. Pooling could also reduce high service fees for investment advice. Most participants were generally in favour of allowing corporations to pool their funds to increase their return on investment.
- **CHANGE THE NAME:** Finally, some participants thought the term "reserve fund" was a misnomer and may mislead owners as to the purpose of the fund. It suggests the money is there, say, for an emergency or in case the corporation has a shortfall in its operating budget, which is not the case. To guard against such misconceptions, they suggested renaming the fund in a way that clearly conveys the idea that it exists to pay for planned repairs and replacements.

Considerations

A number of questions were raised about the proposed solutions:

- Who would set the standards?
- How comprehensive would the requirements be?
- What system would be used (for example, zero-based budgeting)?

Management of the Operating Expenses

The Issue

What steps should be taken to improve the management of “common” or operating expenses? When this question was raised in the Stakeholder Roundtables, opinions quickly divided. In one view, boards already have too much discretion over how these funds can be used and they should be reined in. In the other view, the rules are often too restrictive, forcing boards to seek owner approval for decisions that are, in fact, part of the day-to-day running of the corporation.

What We Heard

As the discussion in the Stakeholder Roundtables progressed, however, it became clear that the two groups were not so much disagreeing on where appropriate thresholds lie, as worrying about different things. Those who thought boards are too restricted offered examples they thought showed that boards lack the flexibility they need to get things done. Those who were opposed provided examples where, in their view, boards had abused their authority, thus leading them to conclude that even more flexibility would only lead to more wasteful spending or abuses of authority. Their concern, therefore, was less about appropriate thresholds for spending than trust in those holding the purse strings.

Although this disagreement was not resolved, both sides did agree that the Condominium Act should clarify some key terms around financial management and provide some clearer rules about when and how money can be spent (see below).

The bigger lesson, however, is about transparency, accountability and trust. Measures to strengthen financial management may require new thresholds for spending; but they must also help establish a relationship of trust between boards and owners. These two goals are not mutually exclusive and adequate reforms must find a way to do both.

Proposed Solutions

- **CHANGES WITHOUT NOTICE:** “Changes without notice” allow the board to spend money without consulting the owners. The limit is currently set at \$1,000 or 1% of the annual budget, whichever is

higher. Despite their differences, most participants in the Stakeholder Roundtables agreed that, on this point, the current limit is too low and should be increased to simplify such decisions. Although there was no clear agreement on a new threshold, when someone suggested 3% of the annual budget or \$1,500 within any 12-month period, no one strongly opposed it.

- **SURPLUSES:** Budget surpluses can be used by the board in relatively open-ended ways. This led some participants to ask about the appropriate limits on the size of surpluses. One side proposed that up to 25% of the annual budget should be permissible. The other side countered that allowing big surpluses only encourages boards to inflate the budget in order to create a “slush fund”. To prevent this, they said, surpluses should not be allowed to exceed 10% and, for budgets over \$1 million, not more than 5%.
- **SUBSTANTIAL CHANGE:** Participants in the Stakeholder Roundtables agreed that boards should have the authority to approve more expensive projects (“substantial change”), such as fixing leaky windows or repainting a lobby, but which are not included under reserve fund expenditures. They disagreed on how much a board should be allowed to spend on such projects without informing the owners or seeking their approval.

In one view, the limit should be set at 10% of the operating budget. The opposing view is that it should be restricted to 10% of the first \$100,000, and then subject to a downward sliding scale as the amount increases.

Although no clear agreement was reached, there was possible middle ground. Participants discussed the possibility of distinguishing between different kinds of operating expenses. For example, greater clarity around terms such as “repair” or “maintenance” could distinguish these expenses from expensive or unnecessary aesthetic improvements, such as additions or alterations. Greater flexibility could then be allowed for repairs and maintenance, while other improvements would require that the

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board notify owners of its plans or, possibly, seek its approval.

- **STANDARD UNIT DEFINITION:** Uncertainty over the standard unit definition (i.e. the difference between what is the responsibility of the corporation [standard unit] and the responsibility of the owner [betterment]) leads to confusion over what insurers will cover for an insured peril claim within a unit. Although the Condominium Act requires the developer to include a standard unit schedule in the documents it turns over to the owners (S. 43(5)(h)), some developers do not do so and this leaves the corporation with no standard unit definition. In addition, prior to May 5, 2001 there was no requirement for developers to provide such a schedule and the concept of a “standard unit” did not exist. Therefore, many corporations do not have a standard unit definition unless they manage to pass a by-law (which can be very difficult to achieve). To cover these two situations, the Condominium Act should have a basic, default definition of a standard unit which can be modified by either the S. 43(5)(h) definition (if the schedule has been provided) for newly built corporations, or a by-law passed by a corporation, which will clarify maintenance, repair, repair after damage and insurance obligations.
- **RESPONSIBILITY FOR DAMAGE:** Lack of clarity over responsibility for damage to common areas or to another unit creates uncertainty. Suppose poor unit maintenance or carelessness by an owner results in damage to the common areas or another unit. The Condominium Act is unclear about who pays the corporation’s deductible for the damaged property. The Condominium Act should clarify who is responsible, which, presumably, is the owner of the unit where the damage originated.
- **LIENS:** In certain circumstances, boards may place a lien against an owner’s unit. This might happen if, for example, the owner fails to pay his/her monthly fees. Liens are an important tool for financial management and both Stakeholder Roundtable participants and ONCONDO submissions agreed

that the community needs this protection when owners fail to meet their financial responsibilities. However, the Condominium Information Centre, along with some owners at the Minister’s Public Information Sessions, were concerned that some boards are abusing this power, using liens as a pressure tactic to force owners to accept the board’s view of things. As a result, there were calls for changes to the Condominium Act to clarify what costs can be added to a unit’s common expenses and for which the corporation can then lien.

Keeping Owners Informed

The Issue

The Residents’ Panel had much to say on the importance of communicating financial information to residents. Their proposals cover three basic areas:

- The responsibility of boards to provide financial information to owners, including non-resident owners.
- The need for boards to educate and inform residents on their rights to access financial information, and the procedures for obtaining it.
- The need to ensure that important financial data is available in a form that owners can understand, especially as concerns the creation of reserve fund studies.

What We Heard

- Boards should take steps to provide residents with more timely, accessible information on key issues such as the reserve fund.
- Boards should take steps to inform and educate residents on financial matters.
- The Ministry of Consumer Services should work with stakeholders to help ensure that these goals are achieved.

Proposed Solutions

- The Residents' Panel calls on boards to provide a welcome package to all new owners within the first month of the new owner taking possession that includes:
 - Update on current projects and upcoming/ planned projects, including actual or estimated costs and related financial implications.
 - Information explaining the responsibilities of the board of directors, the owner's right to access the condominium's financial information (including the reserve fund study and other financial documents) and the procedures for owners to access this information.
 - A general guide to special assessments and maintenance fees (likely best prepared by an outside party) and clear details about the current maintenance fees and special assessments for their condominium corporation.
 - Information about who owners should contact with financial questions.
- The Residents' Panel calls on the Ministry to work with other stakeholders to ensure that residents are better informed:
 - Boards of directors should invite the professionals who conducted the reserve fund study to make a clear, comprehensive presentation to owners about their findings.
 - Boards should update owners at each AGM and otherwise, as necessary or prudent, regarding any changes to the reserve fund and to anticipated costs.
 - Boards and condominium managers should be encouraged to create a forum where owners can discuss concerns or ask questions about the reserve fund study and its findings. The forum should be appropriate to each building's size – a bulletin board may be sufficient for some, an intranet site may be needed for others.
- The Residents' Panel calls on the Ministry to take a leadership role in collaborating with stakeholders to help ensure that information is accessible and understandable to owners, including :
 - A request to auditors that they include notes to financial statements, which will help owners to better understand the corporation's financial performance.
 - The expectation that auditors will present and explain to owners the portion of the audit that compares the current year's activity with that of previous years.
 - The production of a toolkit by the Ministry, in cooperation with other stakeholders, that helps condominium owners understand the financial statements of their condominium corporation and assess the financial health and sustainability of the building.

Consumer Protection

Issues Concerning Disclosure The Issue

As anyone who has purchased a new condominium knows, the documents relating to the sale are long and highly technical, making them difficult, if not impossible, for most buyers to decipher. Those who want to ensure they understand the terms and conditions of the sale have little alternative but to hire a lawyer with specific expertise in condominium law to review the documents and explain the key points. Unfortunately, as an expert in the field reported at one of the Residents' Panel meetings, this has become so costly that many buyers simply forego the option.

This raises two important questions: First, are some developers using this situation to "bury" important aspects of the sale in the documents? Second, given the technical complexity of such documents, is it reasonable to place all the responsibility of the buyer to inform him/herself about the terms of the sale?

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What We Heard

These questions were discussed in all four discussion streams, with many participants insisting that developers do in fact bury important information; and developers, or those representing them, replying that such issues are always fully disclosed in the sale documents.

A particularly contentious example concerns so-called “deferred costs” on parts of the common elements. For example, some buildings include a guest suite that owners can reserve for their guests, usually for a fee. Buyers tend to assume that because such amenities are part of the common elements, they are included in the purchase price of their condominium, as are the hallways or the lobby. And, not so long ago, that was the usual practice.

In recent years, however, developers have begun legally separating such amenities from the rest of the common elements. They then use the transfer documents and sale agreements to commit the corporation to buy or lease them back from the developer at a later date. This has two consequences. First, it means the sale price of the condominium can be reduced as the developer will regain this money through the sale of the amenity to the corporation. Second, when the sale takes place, say, a year after the building transfer, owners find that their monthly fees suddenly rise to cover the cost of the mortgage on the “new” acquisition—which many thought they already owned.

Developers say this practice is necessary for two reasons. First, it allows them to ensure the cost of their units is competitive with other developers. Second, in increasingly complex projects, such as multi-phase developments, it lets them find more flexible arrangements for amenities such as a gym or game rooms. In such a project, a gym might be shared between several buildings, but not come into existence until the last building has been completed. In the developers’ view, the practice is also fair because such arrangements and any related costs are always fully disclosed in the documents.

A second, slightly different example involves utilities, such as electricity or gas. Cases have surfaced in mixed-use buildings (i.e. those with both commercial space and residential) where developers do not install separate meters

for the commercial and residential uses of these services. Instead, there is just one meter and one bill, showing the total cost. This is then shared among the residential units and the commercial tenants according to a formula set out in the sales documents. However, a commercial space such as a coffee shop will use far more electricity or water than individual units but, in such an arrangement, the formula may assign most—even all—of the cost to the residential units. Almost everyone who commented on such a practice saw it as a way of unloading the businesses’ operating costs onto the unit owners. Let’s call this practice *subsidization*.

Proposed Solutions

If we look at practices such as deferred costs and subsidization through the list of values provided by the Residents’ Panel, they raise serious questions around Fairness, Informed Owners, Clear Communications and Financial Stability. While most participants thought buyers should bear some responsibility for informing themselves, given the enormous size and complexity of the sale documents, there was general agreement across all four discussion streams that it is unreasonable and unfair to place all the responsibility on the buyer. All four streams therefore called for better disclosure:

- **SMART DISCLOSURE:** The preferred direction for reform was captured by the phrase: *smarter, not more, disclosure*. Participants largely agreed that the last thing buyers need is *more* information. What they really need is the *right* information—and they need it up front, highlighted and in plain language. To help achieve this, participants proposed the following steps:
 - The Condominium Act should contain a checklist of items whose related costs and special circumstances must be included in a disclosure summary of key consumer protection points. This might be accompanied by a recommendation or even a requirement that a lawyer review the summary, explain it to the client, and have the client initial it.
 - In the Stakeholder Roundtables, it was pointed out that the table of contents in the legal



documents already contains a summary of key information. Some wondered if this was adequate. Participants concluded that the language there was too technical to be of use to most residents and that some further summary document was needed.

- Such a summary should be in plain language. In calling for plain language, participants in the Stakeholder Roundtables recognized that the Condominium Act could not require that the legal documents be written this way—this would be impossible to define or enforce—so this summary was understood to be a document that would accompany the legal document, somewhat like a backgrounder or promotional brochure.
- Condominium corporations and developers should have a website that provides quick and easy owner access to key documents. This would also allow for a word-search of key terms in the documents.
- **SUBSIDIZATION:** The practice was condemned as unfair and most agreed it should not be allowed. All commercial spaces should be metered separately from private units.
- **DEFERRED COSTS:** There was considerable discussion whether separating common elements and then deferring the costs on them should also be disallowed. Few people were convinced this practice was either necessary or beneficial. The argument that it is needed to ensure competitive pricing found few converts. If all developers are required to play by the same rules, participants replied, no developer will have a pricing advantage over another by deferring costs. However, participants did acknowledge that, as a result, condominium prices will rise, but only because costs that would have been attached to future monthly fees would now be included in the purchase price of the unit. Most felt this was a good, rather than a bad, thing. They saw it as the best way to ensure visibility, transparency and simplicity. They also thought it would help ensure that buyers do not purchase

units that are beyond their means because they are unaware of future costs.

- **EXCEPTIONS:** These same participants agreed there should be some exceptions where deferred costs are allowed, such as green technology, but that exceptions should be identified on a case-by-case basis and itemized in the Act. If developers believe there are other ones, or wish to argue that such a ban would limit legitimate building strategies, the burden should be on them to make the case, clearly and simply.
- **COSTS ALL IN YEAR 1:** If an outright ban on separating out common elements is found to be unworkable or unacceptable, participants proposed a second option: (1) require that all costs be included in first-year budgets, which would rule out any deferred costs; and (2) require that any separation of amenities, or special exceptions for deferred costs, be clearly disclosed and perhaps even initialled by the buyer.

Status Certificates

The Issue

According to lawyer and condominium law expert Audrey Loeb, the purpose of the status certificate for a resale condominium is to “ensure that prospective purchasers and mortgagees of units are given sufficient information regarding the property to make an informed buying or lending decision.” This would include, for example, whether the current owner is up-to-date in paying his or her monthly common expense fees or details on the financial status of the condominium corporation, including:

- The current budget
- The most recent audited financial statement
- Status of the reserve fund
- Special assessments in place or planned

The main issues raised in the four discussions streams around status certificates concerned:

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- Timely provision and the cost of the documents;
- A call for more comprehensive information about special assessments; and
- Overall assurance that, at the time of purchase, buyers will be provided with information of sufficient clarity, depth, and accuracy to allow them to make well-informed decisions about purchasing and owning a unit.

What We Heard

- At present, a request for a certificate must be met within 10 days, at a cost of up to \$100. Some in the Stakeholder Roundtables argued that the time limit is too long and that there is no real justification for the cost. They felt that if the corporation is well-managed these certificates should be up to date, so the timeline seems unnecessarily long and the cost unjustified. Indeed, if the information is on record at all times, and likely online, it should take only a few minutes to produce the document, so why the 10 days and the \$100 charge?

Others felt that this account oversimplifies the situation. For one thing, keeping the information up to date can be complex and sensitive. While much of it is standard, sometimes the information is sensitive, may need to be gathered, verified, and may even need to be reviewed by a lawyer. In addition, the individual who signs off on such a document accepts liability for the accuracy of the statements. They need the time to feel certain it is correct. Finally, managers have many duties and may receive 10 requests per week for such certificates. Allowing some time to deal with the request is completely appropriate.

- Buyers are not always provided information with sufficient clarity, depth and accuracy at the time of purchase, meaning buyers are not always equipped to make well-informed decisions about purchasing and owning this complicated type of property.

Proposed Solutions

- **STATUS QUO:** Following the exchanges between Stakeholder Roundtable participants, a majority concluded that a cost of \$100 and 10 days for delivery of the documents is not out of line. Others dissented.
- **COMPREHENSIVE INFORMATION:** Some in the Stakeholder Roundtables proposed that the certificate should include more comprehensive information related to pending special assessments, as well as the cost to date of pending legal proceedings.
- **INFORMING CONSUMERS AT THE TIME OF PURCHASE:** The Residents' Panel recommends that, within 18 months of their report, the Ministry develop a standard template for pertinent information to be included in an executive summary for status certificates and disclosure statements. More specifically, they proposed that the Ministry (via an amended Act):
 - Require sellers to provide the completed executive summary to buyers with the status certificate or disclosure statement;
 - Require developers to give all buyers accurate projections of maintenance fees and reserve funds for at least one year after hand-over of the corporation from the developer to the elected board of directors; and
 - Work with others to review the definition of material change and continue to require that developers communicate any material changes to buyers.

Qualifications of Condominium Managers

The Issue

Like the buildings they manage, condominium property management firms come in many shapes and sizes. Lots of different responsibilities fall under the term “property management”, and the firms who perform them vary greatly, ranging from small one or two-person operations, to large organizations with specialized staff. In addition, some condominiums are self-managed or managed by a single individual who does not belong to a firm.

While many of these managers are well-trained professionals of high integrity, others are not. In Ontario, there are no requirements to become a property manager, so anyone can start up a business. Although a variety of organizations offer training and educational programs to improve quality, such training is voluntary and the uptake is low.

What We Heard

Participants from all four discussion streams expressed serious concern about the situation. The Minister’s Public Information Sessions and online submissions were filled with stories of managers who allegedly understand neither the Condominium Act nor the by-laws of the community they manage; who are unclear on their obligations, duties and responsibilities as managers or of the rights and responsibilities of owners; and who have no training or experience in contracting, building maintenance or financial management. Yet these same people may be responsible for the day-to-day operations of a multi-million dollar corporation, often with little oversight.

Proposed Solutions

Participants were very clear about the need for change. They want property management firms to meet appropriate standards and they want individuals who work onsite to have the appropriate education and training. But what kinds of standards, education and training are appropriate and how should they be implemented? In the Stakeholder Roundtables, a training framework was discussed that resolves the training options for Ontario into four basic approaches:

- **SETTING STANDARDS:** Standards define the minimum level of performance that is expected for each task that a firm or manager must perform. This, in turn, allows various competencies to be identified that should be required of a person or firm to do the job. For condominium managers, these would likely include adequate knowledge of the Condominium Act and effective skills in financial management and contracting practices.
 - **Option 1:** Stakeholder organizations could work together to define a clear, comprehensive set of standards for condominium property management. This would provide directors with a baseline against which to assess candidates for a position.
- **ENCOURAGING CERTIFICATION /ACCREDITATION (C/A):** This is where a third party, such as a college or association, offers formal education and training to meet certain standards and then provides official recognition of the achievement through, say, a diploma or certificate. The program may include courses and exams, as well as opportunities to develop the practical skills needed to do the job. If C/A is voluntary, this means there is no requirement that an individual complete the program to practice.
 - **Option 2:** Stakeholder organizations could: (1) work together to define comprehensive standards; (2) make these the basis of a certification program; and (3) encourage condominium corporations to hire only accredited managers and management firms.
- **REGULATING AND LICENSING THE INDUSTRY:** Licensing is a process by which government (or other regulatory organization) regulates a profession by requiring that certain standards must be met before a person/firm is allowed to work in the field. Such standards would likely include some level of certification/accreditation to ensure that the licensee has the competencies required for the job. Where licensing is required, it is illegal to practice without a licence. By the same token, a licence can be revoked if the rules are not respected.

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- **Option 3:** Government could: (1) work with key stakeholder organizations in the field to develop a comprehensive set of standards; (2) encourage these organizations to create appropriate accreditation programs around the standards; and (3) implement a licensing program based on the standards and accreditation programs.
- **ACCEPTING THE STATUS QUO:** Although this was a minority opinion, in both the Stakeholder Roundtables and ONCONDO submissions, some argued that boards are ultimately responsible for managers. As a result, they felt that any policy amendments should be made at the board level.
 - **Option 4:** Do nothing so that the status quo is maintained.
- **COMMUNICATIONS AND CONFLICT AVOIDANCE:** Managing a condominium community should require training in diversity sensitivity and human rights issues. In addition, condominium managers should be familiar with dispute-resolution services and trained in needs-identification so that they can recommend options to owners and directors and help ensure that conflicts are resolved at the earliest possible opportunity and through the most cost-effective method.
- **TOOLS AND PROCESSES:** The Residents' Panel calls on the Ministry to work with "boards of directors, condominium owners, and condominium managers so that they can better address condominium manager performance issues [including] the provision of sample templates for condominium manager contracts."
- **LEVEL OF ACHIEVEMENT:** While there was no clear view on the appropriate institutional level for training—university, schools of management, colleges and associations were all mentioned—there was agreement that training should be substantive, comprehensive and ongoing. Continuing education, said one participant, is now a widely accepted standard in most professions. It was noted that the Association of Condominium Managers of Ontario (ACMO) requires 15 hours of upgrading per year.
- **GRANDPARENTING:** If substantive requirements are established, what happens to those who are already practicing? Stakeholder Roundtable participants agreed that, while a two-tier system is unacceptable, grandparenting would likely be necessary and the new requirements would be phased in over a reasonable period of time. At the end of that period, however, everyone would have to meet the new standards. Consideration could be given to establishing a process whereby experience in the field could count as credit toward the licence.
- **RISING MANAGEMENT COSTS:** In larger corporations, one participant noted, full-time managers can already cost \$120-130,000 per

Considerations

Although many views were expressed about these four options, no decisions were made as to a preferred option. However, during the various presentations, discussions and questions, the following important points were raised and discussed:

- **MANDATORY TRAINING:** Although a few participants thought Option 1 or 2 above were adequate, most were convinced that training and education should be *required*. Voluntary participation, they insisted, doesn't work. The Residents' Panel was particularly clear about this, saying that they expect "the core competencies of condominium managers are well defined and well suited to condominiums in Ontario," and that they "expect the revised Condominium Act to legislate a mandatory licensing or regulatory framework for condominium managers."
- **INTEGRITY AND ACCOUNTABILITY:** Almost no one disagreed that "appropriate standards" should include a code of ethics. Further, many thought such a code should be supported by some kind of enforcement regime so that, if the standards are not met, a penalty would follow, such as a fine or revoking of the licence.



year. Would raising the standards shrink the pool of managers and therefore raise the cost, he wondered? Most participants felt the market would take care of itself. For one thing, new talent will be drawn in by higher wages, thus replenishing the stock. Further, the bidding process will keep costs under control, as long as everyone is on the same playing field with respect to requirements.

- **USER PAY:** The provincial government is under severe fiscal pressure. Realistically, if reforms are designed in a way that places the financial burden on government, they are unlikely to happen. A solution to the training issue must be based on the principle that costs will be borne by management firms and the rest of the condominium community.
- **IMPLEMENTATION:** Deciding which option is the right one for Ontario will require a careful discussion of a range of practical questions around implementation, such as:
 - Who would set the standards for certification/ accreditation?
 - Would there be just one regulating body to award this status?
 - How demanding and comprehensive should the standards be?
 - If government were to regulate, how, when and by whom could licences be revoked?
 - What kind of insurance needs would this create?
- **TRANSITION:** There is a question of how rapidly a new regime could be designed and implemented, and how long the phase-in period would be. Stage Two will need to carefully weigh questions around the capacity of the sector to build the capacity need to support the new standards.

Issues outside the Condominium Act

The Condominium Act 1998 is only one of a number of important pieces of legislation that regulate the sector. Other Acts that are relevant include:

- *Planning Act* – This sets out the ground rules for land use planning in Ontario and describes how land uses may be controlled, and who may control them. This includes planning of condominium developments.
- *Building Code Act, 1992* – The Building Code sets a minimum standard of rules respecting the safety of buildings with reference to public health, fire protection and structural efficiency.
- *Residential Tenancies Act, 2006* – The Condominium Act applies to residential rental housing, giving landlords and tenants specific rights and responsibilities.
- *Assessment Act* – The Condominium Act, administered by the Municipal Property Assessment Corporation (MPAC), sets out a uniform, province-wide assessment system. Stakeholders have requested that a different taxation class be created for condominium units because condominium corporations pay for services most freehold home owners receive directly from the municipality, such as garbage collection and snow removal.
- *Arbitration Act, 1991* – This Act sets out default rules for arbitration proceedings. Most disputes under the *Condominium Act, 1998* are required to be resolved through mediation and arbitration.

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- *Human Rights Code* – The Code provides every person equal rights and opportunities without discrimination in specific areas such as jobs, housing and services. All declarations, by-laws, and rules enacted by condominium boards must conform to the Code.
- *Ontario New Home Warranties Plan Act* – Administered by Tarion Warranty Corporation, the Condominium Act establishes a consumer protection regime providing warranty coverage to new homebuyers. Every developer of a new home or condominium is required to register with Tarion and enrol every new home or condominium unit before construction.

Unsurprisingly, participants in all four discussion streams raised issues that went beyond the scope of the Condominium Act and that, in various ways, impacted on these other pieces of legislation. These included concerns around property taxes, condominium conversions, insurance rates, tenant rights and responsibilities, as well as development trends and power imbalances in the condominium sector.

Online submissions also included recommendations such as improving information for owners, enhancing the design and readability of the Condominium Act, requiring individual metering of utilities, ensuring flexibility based on building type, as well as placing restrictions on pets, smoking, and the age of residents.

Although the Ministry of Consumer Services is not responsible for most of these Acts or reforms to them, these comments and proposals have been duly noted and shared with officials in the appropriate ministries.

CONCLUSION

At several points in the different discussion streams, participants described condominiums as the “fourth order of government”, after federal, provincial and municipal governments. The comparison is neither exaggerated nor far-fetched. Having now described the findings from these four discussions, it should be clear that condominium living is about much more than sharing a building. Condominiums are self-governing communities and, perhaps unsurprisingly, the challenges this poses are strikingly similar to those facing our governments, including:

- Leadership that is transparent, accountable and responsive, and that communicates well with community members;
- Effective management that leads to good planning and financial stability; and
- Informed and engaged owners.

This last point merits further comment. Owners may demand more transparency and accountability from their boards or better management from their managers, much as citizens are now doing of their governments. But, in the end, owners, like citizens, must do more than demand that decision-makers meet higher standards. They must even do more than take steps to inform themselves about the issues. They must also take action—they must become *engaged*. Democratic governance is a two-way street that requires strong, effective participation from community members, whether they are citizens or condominium owners.

The success or failure of community-building thus rests as much with owners as with boards and managers. Everyone must accept a fair share of the responsibility for making the community work. Failing to do so leads to disorder and decay, just like a house falls down if it is not properly maintained. The roof begins to leak, the siding cracks, and the stairs rot.

Condominiums also require maintenance and care; not just physical maintenance of the building, but of the basic relationships that define the corporation as a community. As we’ve already seen, the Residents’ Panel views the building and stewarding of relationships as essential to a community’s well-being. Thriving condominium communities, they tell us, are reservoirs of social capital:

...the panelists offer a message that has not been highlighted in many other discussions concerning condominiums in Ontario – the importance of social capital....when people know each other in their building, it can help boost participation, diffuse and resolve conflicts, spread information, and uncover creative solutions.

The critical message here is that the well-being of the community depends on strong relationships and building strong relationships requires everyone to do their part. This is the core idea beyond what we called the community contract.

But is everyone willing to do their part? At the end of this first phase of the process, there is reason to be optimistic. Stage One has been about identifying key issues and solutions and exploring where agreement and disagreement lie. While important differences and disagreements remain, when all is said and done, there is a remarkable degree of agreement among residents and other stakeholders on what the key issues are and what needs to be done to solve them.

By way of a conclusion, let’s briefly recap some of the highlights of the discussion in the five issue areas. We think there is broad support for the following key points:

- **GOVERNANCE:** Condominium boards of directors, particularly first-time directors, need training and support. Boards need to be more diligent in informing and educating their own members and the owners about everything from community rights and responsibilities to the financial state of their condominium. Boards also need to take steps to increase their responsiveness, transparency and accountability. In particular, corporate and governance documents (such as by-laws or board meeting minutes) must be made more readily available and information must be accurate, accessible, up to date, and complete. For their part, owners need to be more engaged and accept a greater degree of responsibility for the good governance and management of the community, including participating in AGMs.

CONCLUSION

- **DISPUTE RESOLUTION:** Although a more effective and efficient means to enforce the rules and responsibilities set out in the Condominium Act is needed, this is only one part of a high-quality system for resolving disputes. Participants agreed that issues could often be resolved quickly and amicably if they had better access to the right information, informed and impartial advice, and reliable, trusted mediation. Such tools likely will need to be incorporated into a more effective dispute resolution system for the future. However, this raised further questions around how such a system would work and be managed. Many felt that some form of independent, authoritative agency or organization would be needed to oversee the development and implementation of these tools and processes.
- **FINANCIAL MANAGEMENT:** Reserve funds (funds that owners pay into as part of their common expense contributions for major repairs and replacement of common elements and condominium assets) must be adequately funded through contributions based on appropriate, standardized studies. The rules around the use of operating funds need to be revisited and adjusted. In some cases, more flexibility may be appropriate, but, if so, it should be very clear how and where funds can be used and how owners will be informed of this. Owners need access to tools and information that will keep them well informed on how their monthly contributions (and possible special assessments) are set and used. Such information must be accessible, timely and reliable.
- **CONSUMER PROTECTION:** Documents related to the sale of a condominium unit should be supported by plain-language summaries the buyer can understand. The full cost of purchasing and living in a condominium must be fully transparent. All costs should be included in the first year. Any exceptions should be required to meet stringent criteria, including disclosure to ensure consumers can make an informed decision.
- **CONDOMINIUM MANAGER QUALIFICATIONS:** A higher standard of skills and training is necessary for managers and management firms. This almost certainly involves mandatory knowledge, and may also require regulation of the industry by the government or an organization acting on its behalf.

With the submission of this Findings Report to the Ministry of Consumer Services, Stage One of the review process is complete. Stage Two will begin in March 2013, when experts in condominium issues (including owners) will meet to review the findings from this report. Based on the issues, proposal and arguments it contains, these experts will work together to develop a detailed set of options for renewal of the Condominium Act. In Stage Three, which will begin in the fall of 2013, the options will be reviewed and validated by condominium owners and other stakeholders, after which they will be presented to the government and the condominium sector. The public is invited to comment on the findings report by March 11, 2013, at oncondo@ontario.ca.

If there is an overarching conclusion from this Findings Report, it is that we should all be encouraged by how much agreement exists across the condominium community on the issues and solutions. There is still a long distance to travel and no reform package will please everyone or solve all the issues. But a good one should address a critical mass of the issues and garner support from across the community. On this front, there has been real progress.

For more information and updates on this project, including supporting documents please visit ppforum.ca/publications.

