

# Let's Talk Condo...

Pages 247 - 250

## Announcements:

### Mark Your Calendar:

The 2007 Toronto Condo Show will be held on October 19, 20 and 21- at the Metro Toronto Convention Centre.

Keep a look out for details of our Condominium Practice Group's seminar for board members, property managers and industry professionals to be presented at the upcoming Toronto Condo Show.

Go to [www.mondocondo.com](http://www.mondocondo.com) to view MondoCondo TV episodes currently running on TvTropolis at 9:30 Saturday mornings.

## in this issue...

Security & Concierge Outsourcing .....247

Insurance Deductibles ... .248

Avoiding Human Rights Complaints .....249

**ONTARIO'S LEADING  
CONDOMINIUM LAW  
PRACTICE**

**MILLER  
THOMSON** LLP

Barristers & Solicitors  
Patent & Trade-Mark Agents

# SECURITY & CONCIERGE OUTSOURCING



by  
Audrey M. Loeb  
416.595.8196  
[aloebl@millertthomson.com](mailto:aloebl@millertthomson.com)

The Act to revise the *Private Investigators and Security Guards Act* (the "Act") will impact condominium security guards and concierges in Ontario. Currently, condominiums retain security guards and concierges in two different ways: they can hire individuals directly, and thus act as the employer, or they can outsource security and concierges through a security agency, in which case the agency acts as the employer. Both options will still be possible under the new Act, however outsourcing will be much more convenient, and will reduce the potential liability of a condominium.

### The New Law

The Act received Royal Assent on December 15, 2005, but will not come into force until it is proclaimed. It is unclear when the Act will be proclaimed.

The Act regulates private investigators, security guards, and those who are in the business of selling the services of private investigators and security guards. Thus, the Act applies to condominium security

guards and concierges, as well as agencies that supply security guards and concierges to condominiums.

The Act imposes licensing requirements, as well as procedures for granting and revoking licenses. Offences (such as working as a security guard while unlicensed) and penalties are provided for. The Act also creates a process for dealing with public complaints regarding licence-holders. As well, the Act allows for the creation of a code of conduct for private investigators and security guards.

### Transitioning into the New Act

A person who holds a licence under the old *Private Investigators and Security Guards Act* on the day the new Act comes into force will be deemed to be licensed under the new Act until the licence's expiry date. Accordingly, an individual with a valid licence on the day the Act comes into force will have until the expiration of his or her licence to comply with the licensing requirements of the new Act.

### Implications for Condominium Corporations

The new Act requires that all individuals acting as security guards or concierges be licensed as a security guard. In order to hold a licence, an individual must have a clean criminal record, be at least 18 years of age, be entitled to work in Canada,

*Continued on page 248*

The 2nd edition of "The Condominium Act: A User's Manual", authored by Audrey Loeb, is available from Carswell Publishing. To obtain a copy, please call: (416) 609-3800 or 1-800-387-5164, E-mail orders at [carswell.orders@thomson.com](mailto:carswell.orders@thomson.com); ISBN: 0-459-24273-3; \$75.00

and successfully complete all prescribed training and testing required under the Act.

Further, the Act requires that anyone outsourcing a security guard or concierge do so through a licensed security guard agency. As an alternative to outsourcing, an employer may hire a security guard or concierge directly, but it must be registered as an employer with the Registrar of Private Investigators and Security Guards.

Regulations are forthcoming regarding training and testing standards, the terms of licenses, documents and records that must be kept by the licensee and provided to the Registrar, and the procedure for the registration of employers who hire security guards and concierges directly. Regulations will also address uniform specifications, any equipment and vehicles used by licensees, and a code of ethics for security guards.

It is clear that it is much more convenient to outsource security and concierge staff under the new Act. Outsourcing from a licensed agency relieves the condominium of the requirements of registering as an employer, and of ensuring that employees are properly licensed and compliant with the Act and any forthcoming regulations. An added bonus is that a condominium that is relieved of these obligations cannot be held liable for any breaches of them. Of course, the condominium should still ensure that it complies with the Act by outsourcing only from properly licensed agencies.

Yet another reason to switch to outsourcing is that a condominium will no longer have to address issues arising from the employer-employee relationship. Employers must navigate the hiring and firing process, and the administration of payroll. They must also deal with unexpectedly absent or sick employees, employees on long-term leave, and employee discipline. A condominium that outsources will no longer be in the complex and demanding employer-

employee relationship. It will simply be a purchaser of a service.

### Job Protection for Current Employees

Ontario's *Employment Standards Act* (the "ESA") offers protection for employees of a condominium that switches to outsourcing. The new employer (the outsourced agency) and the condominium both have obligations under the ESA, although the obligations of the condominium are relatively minor.

Under the ESA, the new employer must offer the current employees work, or provide them with termination and/or severance pay. Under either option, the new employer must calculate wages, benefits, and termination and/or severance pay as though the employee had worked for the new employer from the date the employee commenced working for the condominium. Thus, a 5-year employee who works for a condominium that switches to outsourcing must be paid wages, benefits, or termination and/or severance pay as if he or she had worked for the new employer for five years.

The ESA requires that the condominium, upon request, provide a potential outsourcing agency with information regarding the number of current employees, and various details about their hours of work and wages. This enables the outsourcing agency to assess what their obligations under the ESA would be if they were to provide services to the condominium. After an agency and condominium have agreed to a contract, the condominium must, upon request, ensure that the information previously given to the agency is up to date, and provide the agency with the name, address, and telephone numbers of all current employees. This will allow the agency to contact the employees to make job offers, or to arrange for the payment of termination and/or severance pay.

---

## INSURANCE DEDUCTIBLES



by  
Warren Kleiner  
416.595.8515  
wkleiner@millerthomson.com

Section 105 (2) of the *Condominium Act*, 1998 makes a unit owner responsible for the lesser of the cost of repairing damage to the owner's unit and the deductible limit of the corporation's insurance policy where the damage to the unit was caused by an act or omission of the owner,

a lessee or a person residing in the owner's unit with the permission or knowledge of the unit owner. Those costs, according to the Act, are to be added to the common expenses payable for the unit. Section 105 (3) allows a corporation to pass a by-law extending the circumstances in section 105(2) under which an amount may be added to the common expenses payable for an owner's unit where the damage to the unit was not caused by an *act or omission* of the corporation. These sections of the Act raise several questions.

- What is the meaning of 'act or omission'? Does it include any act or omission not just negligence?

- Does section 105 (3) of the Act allow a corporation to extend the circumstances for owner liability with respect to damage to the owner's unit only, or can an owner also be responsible to the same extent for damage caused to the common elements or other units?

The recent decision of the Ontario Superior Court of Justice in *Judy Zafir v. York Region Condominium Corporation No. 632* may shed some light on the interpretation of section 105. The unit owner turned off the main shut-off valve in the unit before leaving for a vacation. The corporation posted notices requesting owners to do that to minimize the risk of water leakage. The valve leaked and caused damage. The corporation registered a lien to recover the costs incurred to repair the damage. The evidence had shown that it was the act of opening and closing the shut-off valves that caused the valves to leak. The question posed is whether the owner turning off the shut-off valve was an act that should result in the owner being responsible for the lesser of the cost to repair the damage and the corporation's insurance deductible limit?

The court found that 'act or omission' does not necessarily require negligence. On the other hand, the language of the Condominium Act does not make an owner strictly liable for resulting damages howsoever caused. Each case must be determined on its own facts. In this case the judge found that turning off the valve and not waiting to see if a leak developed could not be construed as an act or omission causing the damage

for which the unit owner should be held responsible. It would be inequitable to hold the owner responsible for repairing the damage when the leak was more likely to occur by following the corporation's requirements to turn off the valves before leaving on holiday.

Preventative maintenance could have prevented the damage, however the court found that this could only be done with the coordination of many other units. Therefore, even if the plaintiff had wanted to do so, the corporation would have had to arrange the maintenance. The honourable Conway, J. stated the he had "trouble holding a unit owner responsible for failure to do preventative work which he could not arrange on its own".

Although it was not required for purposes of the decision, Conway, J. went on to state that "there is a good argument to be made that section 105(3) is intended to enable a condominium corporation to establish a regime whereby owners can be held responsible for damages (up to the insurance deductible) to other units and common elements, even where the owner's unit has not been damaged". He went on to state that the language of the Act "should not be seen as establishing a prerequisite that the damage be caused to the owner's unit before there can be a chargeback to the owner". The case is not a precedent for charging repair costs back to the owner where the damage was to the common elements or other units, but is the best authority available on the issue to date. It represents a reasonable and logical approach to the issue based on what most people would expect that the law would provide in these situations.

---

## AVOIDING HUMAN RIGHTS COMPLAINTS - THE VALUE OF POLICY



by  
*Patricia M. Conway*  
416.595.8507  
[pconway@millerthomson.com](mailto:pconway@millerthomson.com)

We have raised in earlier issues the importance of developing a privacy policy, and publishing it to unit owners and residents. The policy is a useful tool to protect the corporation against possible complaints. It is also a useful tool in the education of employees and agents of the corporation about the importance of maintaining unit owner confidentiality.

Another area where policy development can assist the corporation in avoiding potential liability and expense is Human Rights. Many decisions of the Human Rights

Tribunals and the courts in Ontario and in other Canadian jurisdictions have ruled that condominium corporations are providers of accommodation and services to residents, and as such are bound by, and must adhere to, the anti-discrimination and "accommodation" provisions of the Human Rights Code.

Further, as an employer, the corporation is bound by the provisions which prohibit discrimination and harassment in the workplace.

These obligations impose a complex set of duties on the Board of Directors and on property management. Board members and managers are well advised to attend the advanced seminars offered by CCI, which focus on these issues.

Many potential problems can be avoided by taking the time to consider and adopt, as a policy of the corporation, a policy statement which acknowledges the application

of the Human Rights Code to condominiums, and states clearly that the corporation does not tolerate discrimination or harassment. This will, in our experience, be taken into account by the Human Rights Commission, and by the Human Rights Tribunal, in assessing the conduct of the condominium corporation in relation to a particular complaint.

In addition, the exercise of formulating and adopting a policy assists in educating the Board and property

management on their respective duties under the Statute.

Developing a policy in this area may take time, but, in accordance with the old adage, this "ounce of prevention" can prevent the trouble and expense, of the potential "pounding" you may experience during the "cure".

For more information and assistance in formulating an acceptable policy, please call us.



## HAPPY ANNIVERSARY

In 1967, the *Condominium Act* was first introduced in Ontario and we are now in our 40th year of Condominium Living.

Miller Thomson LLP, 2007 All Rights Reserved. All Intellectual Property Rights including copyright in this publication are owned by Miller Thomson LLP. This publication may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the editor from **Betty Dworatschek** Tel: 416.595.2968 Email: [bdworatschek@millerthomson.com](mailto:bdworatschek@millerthomson.com)

This newsletter is provided as an information service to our clients and is a summary of current legal issues. These articles are not meant as legal opinions and readers are cautioned not to act on information provided in this newsletter without seeking specific legal advice with respect to their unique circumstances. Miller Thomson LLP uses your contact information to send you information on legal topics that may be of interest to you. It does not share your personal information outside the firm, except with sub-contractors who have agreed to abide by its privacy policy and other rules. If you would like to receive our newsletter, please email [bdworatschek@millerthomson.com](mailto:bdworatschek@millerthomson.com)



Your lawyers should be part of your team and not an obstacle to it. At Miller Thomson, our goal is to help your team reach its goals by offering experience, insight, creative and practical thinking and maximum value. This is how we have become Ontario's leading condominium practice group.

### FOR PRACTICAL SOLUTIONS

## MILLER THOMSON LLP

Barristers & Solicitors  
Patent & Trade-Mark Agents

**Tel:** 416.595.8500  
**Toll Free:** 1.888.762.5559  
**Fax:** 416.595.8695

## LOOKING AT LAW FROM YOUR PERSPECTIVE

ONTARIO'S LEADING  
CONDOMINIUM  
PRACTICE GROUP

**John A. (Sandy) Kilgour**  
[skilgour@millerthomson.com](mailto:skilgour@millerthomson.com)  
416.595.8501

**Audrey M. Loeb**  
[aloeb@millerthomson.com](mailto:aloeb@millerthomson.com)  
416.595.8196

**Denise M. Lash**  
[dlash@millerthomson.com](mailto:dlash@millerthomson.com)  
416.595.8513

**Warren D. Kleiner**  
[wkleiner@millerthomson.com](mailto:wkleiner@millerthomson.com)  
416.595.8515

**Patricia M. Conway**  
(Litigation)  
[pconway@millerthomson.com](mailto:pconway@millerthomson.com)  
416.595.8507

**Tina Flinders**  
(Law Clerk)  
[tflinders@millerthomson.com](mailto:tflinders@millerthomson.com)  
416.595.8524

[WWW.MILLERTHOMSON.COM](http://WWW.MILLERTHOMSON.COM)