

## Looking Back at Condominium Law in 2016 – The Highlights

As we are quickly approaching a new year, we've taken a look back at the condominium legal landscape in Ontario over the past year. This has been quite the year, with a number of notable case decisions released by the courts. Click on the links below to read our full blog on each of the cases.

1. [OCSCC No. 961 v. Menzies](#) – The Ontario Superior Court of Justice concluded that the short-term leasing of a condominium unit was in essence the operation of a hotel and thus constituted a breach of the single-family provisions in the condominium declaration and also a breach of the condominium rule that prohibited leases with terms of less than 4 months. This case, just released late in the year, is good news for condominiums grappling with how to deal with short-term rentals or “hoteling” of units, particularly those condominiums that have single-family use restrictions in their declaration.
2. [3716724 Canada Inc. v. CCC No. 375](#) – The Ontario Court of Appeal recognized that the “business judgment rule” applies to condominium board decisions. As long as the board of directors has acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, the courts will give deference to board decisions. Directors who have met the requisite standard of care won't have to worry about the court “second-guessing” board decisions.
3. [Beanfield Technologies Inc. And MTCC No. 2322](#) – The Canadian Radio-Television and Telecommunications Commission threatened to cut off all telecommunications services to a condominium building if the condominium corporation did not provide timely access on reasonable terms and conditions to a fourth telecommunications service provider. This case puts all condominium corporations on notice that they cannot deny timely access on reasonable terms and conditions to any new telecommunications service provider. Condominium residents will be the winners, as there will be increased competition and more choice of telecommunications providers.
4. [Wu v. CCC](#) – The Court concluded that the e-mail addresses of the unit owners are not part of the condominium records and that the corporation's obligation to provide the owners' addresses for service extended only to the owners' postal addresses. No doubt many unit owners breathed a sign of relief with this decision, knowing that their e-mail addresses would not be released without their consent.
5. [Ryan v. YCC No. 340](#) – After a condominium corporation took four and a half years to complete repairs to stop water from infiltrating into an owner's unit, the Court determined that the corporation had breached its maintenance and repair obligations under sections 89 and 90 of the Condominium Act, 1998 (the “Act”) and awarded the owner damages of \$70,000 plus pre-judgment interest. Condominium corporations must act diligently and efficiently in undertaking any necessary maintenance and repair work, especially where the failure to complete the work will result in additional or on-going damage.
6. [HSCC No. 627 v. Grandview Living Inc.](#) – This case confirmed that a post-turnover board of directors cannot terminate a contract pursuant to section 112 of the Act without the approval of the owners of the two-thirds of the units, where the effect of terminating the contract would result in a substantial change in the corporation's assets or services. Before this case there was no case law specifically dealing with the interrelationship

between section 97 (which requires owner approval of substantial changes) and section 112 (which authorizes the post-turnover board to terminate agreements entered into by the corporation prior to turnover). The effect of this case is that section 97 acts as a “reign on the board” in exercising its authority under section 112 of the Act.

2017 should also be an interesting year. We are still waiting for the Government of Ontario to release proposed regulations under the Protecting Condominium Owners Act, 2015 and the Condominium Management Services Act, 2015. The regulations will provide the details of many of the provisions set out in the new legislation. We are also waiting for the final report and recommendations from Mr. Justice Cunningham following completion of his independent review of the Tarion Warranty Corporation and the Ontario New Home Warranties Plan Act.