Legislative Brief

RECOMMENDATIONS FOR AMENDMENTS TO

BILL 106: PROTECTING CONDOMINIUM OWNERS ACT

Submitted October 22, 2015

Submitted By the Joint Legislative Committee of:

Association of Condominium Managers of Ontario

Canadian Condominium Institute Toronto & Area Chapter

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ABOUT ACMO

The Association of Condominium Managers of Ontario was formed in 1977 to represent the collective aims of all condominium managers. ACMO's mission is to enhance the condominium management profession in Ontario by advancing the quality performance of condominium property managers and management companies.

ACMO provides formal educational programs which, coupled with experience and successful completion of an exam, culminate in the well-known Registered Condominium Manager (R.C.M.) designation. R.C.M. members are governed by a strict Code of Ethics which enhances conduct in the profession.

ACMO is committed to the recognition, promotion and support of Registered Condominium Managers across Ontario, through education, member services, public awareness and a strict adherence to the highest ethical standards.

ABOUT CCI-TORONTO

The Canadian Condominium Institute is an independent, non-profit organization formed in 1982 with sixteen chapters throughout Canada, including seven active chapters located throughout Ontario.

CCI is the only national condo association dealing exclusively with condominium issues affecting all of the participants in the condominium community. CCI's membership is comprised of professionals and business partners servicing the condominium sector in Canada, as well as the Boards and individual residents of Canadian condominiums.

CCI assists the association membership in establishing and operating successful condominium corporations through education, information dissemination, workshops and technical assistance. An integral component of CCI's education mission is to provide training to condominium directors, through the delivery of four progressive levels of educational courses.

EXECUTIVE SUMMARY

The ACMO / CCI-T Joint Legislative Committee has been honoured to serve as a source of information for government officials throughout the drafting of Bill 106. We have educated our members on the merits of Bill 106 and created a platform that allowed for their input in the drafting of these recommendations. ACMO and CCI-T's members are committed to strengthening Bill 106 in a way that allows them to provide the highest level of service to condominium owners and boards while also ensuring trust and respect for the industry.

The Committee has prepared twenty-eight issue summaries contained in this document. The issues addressed here are primarily related to the governance of condominium corporations and the establishment and authority given to a proposed designated administrative authority, to be created by the Condominium Management Services Act (CMSA). The purpose of these recommendations is to highlight areas where wording and interpretation could lead to unintended consequences as the industry begins operating under the rules and structure created by the revisions.

In the category of Governance the potential issues created if the wording of section 105 is revised as proposed could be very significant. The amendment to section 105 seems to eliminate the use of a by-law to extend the circumstances under which the corporation can charge back the deductible, and instead requires that this be included in the declaration. The replacement of the use of a by-law to affect this practice with the need for a declaration amendment poses a huge burden on condominiums. Many existing corporations do not have this provision in their declaration and getting the required consent to amend their declaration may prove impossible. Making a unit owner responsible for the damage they cause via the insurance deductible by-law is a useful tool to motivate unit owners to protect other units and themselves as owners by properly maintaining their own unit. Therefore we recommend that section 105 not be changed to make it harder for condominiums to install this incentive in their governing documents.

In the category of Finance, we applaud the moves made to define 'adequate' in the revisions to the Act. We are confident this change will help improve the financial situations in many condominiums with respect to their long term savings, and will help protect owners purchasing in those communities. The revised wording in section 75 is also a dramatic improvement, with one caveat. The industry would be better protected if developers were responsible for a multiple of the first-year budget deficit, rather than just the amount of the deficit.

By making the developer responsible for a multiple of the first-year budget deficit, it will enable the condominium to stage increases to the fees and provide incentive to developers to produce and implement budgets based on practical forecasts of costs. We recommend that section 75 be amended to make declarants accountable for the amount of the first-year budget deficit multiplied by three.

Our Committee will watch with interest as the dispute resolution model is created and implemented by the Condominium Authority described in Bill 106. While the tribunal can refuse an application if the subject matter of the application is frivolous or vexatious, we would recommend providing for a procedure for an application to be refused if the applicant has been found to be a vexatious litigant. While we believe that many small disputes will be able to be resolved via the tribunal, we are also mindful of the need to protect this new system from abuse and unreasonable expectations.

It will come as no surprise to those who have participated and followed the stakeholders' involvement in the consultation process to see that we fully support the commitment to regulating the condominium management profession and the model chosen to create the regulatory authority. A review of the CMSA left us with some concerns over wording in section 53. The intent of the section to require condominium

management companies to provide the records to a condominium at the termination of a management agreement is laudable and justified, however concerns over the wording are raised on pages 33 and 34 of our submission. The concern with this provision is that management companies need to retain some records of the corporation in order to complete the financials for the period prior to their termination. Section 53, as currently worded, requires the immediate transfer of all records. If termination is made effective immediately, a manager will be required to immediately turn over all records and will be unable to complete some of the required duties. In addition while the condominium is entitled to their documents, the term 'all' could be interpreted that the manager is not permitted to maintain *copies* of information or records produced by them.

CONCLUSION

The condominium sector in Ontario continues to grow rapidly. The modifications to the Condominium Act, 1998 made in Bill 106, including the introduction of the CMSA to license condominium managers, will allow the sector to operate in the spirit of the community housing and shared ownership envisioned in the creation of this housing and property ownership model. It will also assist Boards and owners in resolving disputes internally while reducing costs to unit owners and condominium corporations and will attract new and talented people to a profession which continues to grow to meet the demands of the marketplace.

The positive recommendations offered in these pages are, we believe, in keeping with the spirit of the existing legislation and changes that are proposed.

Our message in the drafting of these issue sheets is one of caution. It is our desire to assist in the development of legislation and regulations that can be interpreted strictly and ruled on without creating hurdles that were unforeseen or unintended.

The ACMO / CCI-T Joint Legislative Committee is extremely supportive of the revisions and will continue to offer the expertise, energy and knowledge of our membership to government throughout the process of drafting regulations, and during the creation and implementation of the new DAA's.

Respectfully Submitted by:

ACMO / CCI-T Joint Legislative Committee

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Issue Sheet No.1

	Governance
Title:	Borrowing By-Laws
Current: *(Condominium Act, 1998)*	56 (3) A corporation shall not borrow money for expenditures not listed in the budget for the current fiscal year unless it has passed a by-law under clause (1) (e) specifically to authorize the borrowing.
Proposed: (Bill 106)	56 (3) A corporation shall not borrow money unless it has passed a by-law under clause (1) (e) specifically to authorize the borrowing or unless the regulations provide otherwise.
Comments:	The proposed changes to the Act could be read so as to prohibit any use of credit (regardless of the size of the expenditure) without a specific borrowing by-law. This could prevent condo corporations from even using store credit cards for maintenance purchases. The provision in the current Act which allows expenditures that are included in the operating budget to be exempt from the requirement for a borrowing by-law was designed to allow corporations to carry out their basic business operations and day-to-day obligations. If the Ministry feels that abuse of this clause is wide spread (and it should be noted that this is not the experience of ACMO, CCI or its members), then we suggest finding another method of stopping that abuse. One possible method would be to put a requirement in the Regulations that only borrowing above a certain amount (e.g., $10,000, including interest) would require a by-law. In the opinion of the committee, this proposed change should not proceedunless we have assurance that the credit card issue will be handled in the regulations.
Recommendation:	Leave section 56(3) unchanged or provide in the Regulations that borrowing below a certain amount does not require a borrowing by-law, or if the government wishes to be more specific, that borrowing using a credit card or overdraft protection below a certain amount does not require a borrowing by-law.

Issue Sheet No. 2

	Governance
Title:	Budget Timing
Current: *(Condominium Act, 1998)*	There is currently no reference to budget timing in the Condominium Act, 1998.
Proposed: (Bill 106)	Annual budget 83.1 (4) At least 30 days before the start of each fiscal year of the corporation after its first fiscal year, the board shall prepare a budget for the ensuing fiscal year that covers the corporation's general and reserve fund accounts and that is prepared in accordance with the regulations. Notice to owners (5) Within 15 days of preparing a budget described in subsection (4), the board shall provide a notice to the owners' that is in the prescribed form, if any, containing a copy of the budget.
Comments:	There is a significant concern that arises with this change to the Act in that the time frame for the distribution of the budget is tied to the approval date of the budget by the board and not to the fiscal year-end date. It is a common industry practice to send the budget to all unit owners only after the Corporation has entered the 12th month of the fiscal year. The purpose is to avoid confusing owners by providing them with a new common expense payment amount for the upcoming fiscal year while a final payment is still owing for the current fiscal year. If this is not done, owners may sometimes end up making payment for their common expenses in the wrong amount.
Recommendation:	The date of the distribution of the new budget should be tied to the end of the condominium's fiscal year. For example, section 83.1(5) could be revised to read: "(5) At least 15 days before the start of each fiscal year, the Board shall provide a notice to the owners that is in the prescribed form, if any, containing a copy of the budget described in subsection (4)"

Issue Sheet No. 3

	Governance
Title:	Insurance Deductible By-law
Current: *(Condominium Act, 1998)*	105(3) The corporation may pass a by-law to extend the circumstances in subsection (2) under which an amount shall be added to the common expenses payable for an owner's unit if the damage to the unit was not caused by an act or omission of the corporation or its directors, officers, agents or employees.
Proposed: (Bill 106)	Alteration by declaration 105(4) After a new board of a corporation is elected at a turn-over meeting held under section 43, a declaration may alter the circumstances in subsection (2) under which an amount shall be added to the contribution to the common expenses payable for an owner's unit if, (a) the alteration is done in accordance with the restrictions or requirements, if any, that are prescribed; and (b) the corporation has met all other requirements of this Act.
Comments:	We fully support the government clarifying the present Act extending coverage for damage to the common elements and other units. However, the amendment to section 105 seems to eliminate the use of a by-law to extend the circumstances under which the corporation can charge back the deductible, and instead requires that this be included in the declaration. These by-laws have been passed by many corporations (with the consent of the majority of owners) since May 2001. A key purpose of these by-laws is to make owners responsible for insured damage to the owner's unit falling within the deductible on the corporation's property insurance policy (ie. a deductible loss to the owner's unit) ***where the damage is no one's fault or it is impossible to prove fault***. The idea is to allow condominium owners to make use of their ability to insure their units for this risk (ie. the risk of insured damage to their unit falling with the corporation's deductible). Otherwise, condominium owners in Ontario are essentially forced to "self insure" for these deductible losses (in that they must pay the deductible losses through their common expenses). Many condominium owners in Ontario have voted in

	favour of insurance deductible by-laws precisely for this reason – so that they can take advantage of their own insurance in relation to such deductible losses. This insurance coverage is readily available to condominium owners (at reasonable costs); and in fact most Ontario condominium owners currently have this insurance. On the other hand, condominium corporations are having more and more difficulty arranging insurance; and are being forced (by their insurers) to accept higher and higher deductibles. Again, those larger and larger deductibles will go uninsured if condominium owners cannot take on the risk themselves (and therefore make use of their own unit insurance policies to cover the risk). Furthermore, if this doesn't occur, the owners' existing insurance (covering these risks) is essentially wasted insurance. The other big advantage of these by-laws is that condominium owners tend to be more careful and vigilant – to try to avoid insured damage to their properties – if they (and their insurers) bear some risk (ie.for the deductible portion of the loss, in relation to damage to the owner's unit) The replacement of the use of a by-law to affect this practice with the need for a declaration amendment poses a huge burden on condominiums. Many existing corporations do not have this provision in their declaration and getting the required consent to amend their declaration may prove impossible. This will in many cases simply defeat the opportunities and advantages of such by-laws (noted above).
Recommendation:	Retain section 105(3) as drafted in the current Act; Delete section 105(4) from the amended Act; and Additional Note: The Regulations should also make the owner liable under 105(2) for damage caused by an act or omission of the owner and his/her tenants, guests, invitees, licensees and agents.

Issue Sheet No. 4

	Governance
Title:	Right of Entry / Reasonable Notice
Current: *(Condominium Act, 1998)*	19. On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or a part of the common elements of which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation.
Proposed: (Bill 106)	19. (1) Subject to subsection (2), on giving reasonable notice to an owner, the corporation or a person authorized by the corporation may, at any reasonable time, enter a unit of the owner in the corporation or a part of the common elements of which the owner has exclusive use to perform the objects and duties of the corporation or to exercise the powers of the corporation. (2) Subject to any conditions or restrictions in the regulations, the declaration or a by-law may permit the corporation or a person authorized by the corporation to enter the unit or part of the common elements of which the owner has exclusive use without prior notice to the owner in the event of an emergency or other event or circumstance as is prescribed. Another alternative would be to use the 177.(1)6.1 authority to make a deemed provision in all declarations that entry in an emergency requires notice.
Comments:	The power to enter a unit in the event of an emergency should be preserved in the Act in order to protect all unit owners, and should not be subject to permission being granted by the declaration or a by-law. Existing condominiums that do not have this provision in their current by-laws or declarations, and are unable to pass the necessary bylaw or declaration amendment, would be at extreme risk if they are not able to enter a unit in the event of emergency. For example, a corporation must be able to enter a unit to investigate a water leak into a unit below and prevent further damage to other units without "reasonable notice", or to investigate smoke emanating from a unit or an active fire alarm. The Corporation should have the protection of the Act in defining reasonable notice as immediate in the event of an emergency or to prevent further damage. The proposed

	addition of subsection 19(2) could dramatically impact the frequency and severity of insurance claims as damage spreads in a condo and the corporation is left trying to reach an owner to inform them of the need to investigate the cause of spreading damage.
Recommendation:	Either delete subsection (2) entirely or revise it to read: "Subject to any conditions or restrictions in the regulations, the corporation or a person authorized by the corporation may enter the unit or part of the common elements of which the owner has exclusive use without prior notice to the owner in the event of an emergency or other event or circumstance as is prescribed."

Issue Sheet No. 5

	Governance
Title:	Indemnification Provision
Current: *(Condominium Act, 1998)*	Not covered
Proposed: (Bill 106)	177(1)The Lieutenant Governor in Council may make regulations, (6.1) setting out provisions that are deemed to be included in the declaration, the by-laws or the rules unless they are amended or repealed in accordance with this Act;
Comments:	The committee recommends that if an indemnification provision is not going to be included in the Act, then it should be deemed included in a standard Declaration to be prescribed by the Act. The indemnification is a key feature of a declaration and an important part of the protection afforded to unit owners. In essence, it is part of the 'social contract' involved in purchasing into a condominium building. Unit owners should be held responsible for their misdeeds or negligence, and other unit owners are entitled to be protected from the misdeeds or negligence of others.
Recommendation:	If the government believes that the declaration is the appropriate place for this protection, then we recommend that a standard indemnification provision be deemed to be included in the declaration of each condominium corporation via section 177(1)(6.1).

Issue Sheet No. 6

	Governance
Title:	Property Ownership
Current: *(Condominium Act, 1998)*	11. (1) Subject to this Act, the declaration and the by- laws, each owner is entitled to exclusive ownership and use of the owner's unit.
Proposed: (Bill 106)	11. (1) Subject to this Act, the declaration the by- laws and the rules, each owner is entitled to exclusive ownership and use of the owner's unit.
Comments:	The new section is missing a comma after the word "declaration".
Recommendation:	Revise the section to insert the comma.

Issue Sheet No. 7

	Governance
Title:	Teleconference Attendance at Meetings
Current: *(Condominium Act, 1998)*	35(5) A meeting of the directors may be held by teleconference or another form of communications system that allows the directors to participate concurrently if, (a) the by-laws authorize those means for holding a meeting of the directors; and (b) all directors of the corporation consent to the means used for holding the meeting.
Proposed: (Bill 106)	35(5) A meeting of the directors may be held, in accordance with the regulations, by teleconference or another form of communications system that is prescribed, if all directors of the corporation consent to the means used for holding the meeting.
Comments:	The ability to participate in a meeting by teleconference should not be subject to the consent of all the directors. A rogue board member may use this requirement to unreasonably prevent the participation of another board member in a board meeting. Unit owners elect a director to participate in the governance of their condominium and steps should be taken in legislation to protect that right of participation to the point of undue hardship on the Board of Directors or the Corporation. If a Director wishes to participate in a board meeting from a winter home or while away on business they should be able to without one director's objection standing in the way of their participation. Of course, a board should be required to consider people with disabilities when making this decision – for example, if there is a deaf lip reader on the board, then teleconference may not be appropriate.
Recommendation:	Amend section 35(5) to read "A meeting of the directors may be held, in accordance with the regulations, by teleconference or another form of communications system that is prescribed."

Issue Sheet No. 8

	Governance
Title:	Proxy Forms
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	52(4) An instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer's attorney, shall be for one or more particular meetings of owners, shall comply with the regulations and shall be in the prescribed form.
Comments:	The Regulation can and should set out the minimum requirements for proxy forms, but should not mandate a prescribed form of proxy without flexibility. The many different types of meetings, and the various types of subjects which may be addressed at them, do not lend themselves to a one-size-fits-all solution. The Regulations should prohobit the pre-populations of candidates' remarks in the proxy form and should mandate that a vote for a director must be by signature of the proxy issuer . It is hoped that this will eliminate the practice of circulating pre-populated proxy forms and clarify the intent of the proxy issuer. The Regulations should also dictate the manner in which a proxy form can be delivered. We recommend permitting electronic delivery of proxies.
Recommendation:	Amend section 52(4) by replacing "shall be in the prescribed form" with "shall have the prescribed content and shall be delivered in the prescribed manner". The Regulations should permit electronic delivery of proxies and electronic voting (with sufficient safeguards). We recommend including in the Regulations that a vote for a director must be signed by the proxy issuer (i.e., sign beside their vote).

Issue Sheet No. 9

	Governance
Title:	Delivery of Notice
Current: *(Condominium Act, 1998)*	47(4) A person whose name is in the record shall notify the corporation in writing of all changes in the address for service.
Proposed: (Bill 106)	47(4) A notice that is required to be given to an owner shall be… (d) delivered at the owner's unit or at the mail box for the unit unless, (i) the party giving the notice has, by the following time, received a written request from the owner that the notice not be given in this manner, (A) in the case of a notice of meeting of owners, at least 20 days before the day of the meeting, or (B) in the case of a preliminary notice described in subsection 45.1 (1) or any other notice to owners that is not a notice of meeting of owners, at least five days before the day the notice is given, and (ii) the owner has given an address for service described in clause (b) that is not the address of the unit of the owner or the address for the mail box for the unit.
Comments:	Section 46.1(3) requires the corporation to maintain a record of the unit owner's name and unit number, and the owner's address for service. The proposed amendment to section 47 would, however, remove the statutory obligation on the unit owner to provide their address for service to the corporation. The current wording of section 47(4) is ambiguous whether delivery by mail to the owner's unit is an acceptable method for giving notice where subclauses 47(4)(i) and (ii) are not met. We recommend making it clear that notice may be sent by mail to the owner's unit, and that hand delivery is not required.
Recommendation:	Amend section 47(4) by replacing "delivered at the owner's unit" with "delivered at or mailed to the owner's unit "

Issue Sheet No. 10

	Governance
Title:	Section 98
Current: *(Condominium Act, 1998)*	98(3)An agreement described in clause (1) (b) does not take effect until, (a) the conditions set out in clause (1) (a) and subsection (23) have been met or the conditions set out in clauses (1) (a), (c) and (d) have been met; and (b) the corporation has registered it against the title to the owner's unit.
Proposed: (Bill 106)	In the revised Act section 98(3) above becomes section 98(4).
Comments:	Many of the modifications which fall under the umbrella of section 98 are minor or inexpensive modifications to the common elements. The cost for the preparation and registration of a section 98 agreement for these smaller modifications can be several hundred dollars, and in many cases is far more expensive than the modifications themselves. Where the cost of preparing and registering a section 98 agreement is out of line with the expense involved in the actual modification: owners may decide against making the modification or make them without notice to the corporation, owners may feel their elected board is unreasonable and out of touch for demanding minor changes be captured in a formal legal agreement, or owners and the corporation may mutually decide to forego a section 98 agreement. The intent of registering a section 98 agreement on title is to provide notice to future owners of their obligations with respect to the modifications to the common elements. This goal could be accomplished by allowing the changes to be captured in a by-law, registered on title, which pre-authorizes unit owners to undertake a set number of authorized, minor changes, subject to providing notice to the corporation that the change is being made (or a signed acknowledgment). The by-law would capture the terms and conditions (e.g., responsibility for repair, maintenance, and insurance, indemnification, etc.) that would typically be included in a section 98 agreement. A section 98 agreement would still be required for repairs which are not specifically authorized by the by-law.

Recommendation:	Add the following as section 98(4)(c): "(c) or the modification is one which is authorized by by-law."

Issue Sheet No. 11

	Finance
Title:	1st Year Budget Deficiency - Collection
Current: *(Condominium Act, 1998)*	75. (1) The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description.
Proposed: (Bill 106)	75. (1) The declarant is accountable to the corporation under this section for (a) the statement mentioned in clause 72 (6) (e) that is required to be contained in the budget statement described in subsection 72 (6); and (b) the portion of the budget of the corporation for its first fiscal year required by subsection 83.1 (3) that represents the one-year period immediately after the registration of the declaration and description and that is determined in accordance with the regulations.
Comments:	The proposed revisions to the Act improve the calculations of a first year deficit, but unfortunately sometimes condominiums are unable to collect the shortfall. In many cases a developer threatens to litigate the amount of the shortfall and the corporation takes a reduced amount in exchange for avoiding costly litigation, or the developer refuses to pay, the corporation litigates and then finds that the corporation set-up by the developer for the condominium project has no assets or is bankrupt.
Recommendation:	One option to address this would be to include a requirement in the Act or the Regulations for the developer to have in place a bond or letter of credit that the corporation can draw on if the first year deficit is not paid. This would of course require a process for agreeing on the deficit amount (perhaps through the CAT, or mediation/arbitration) prior to the condominium making a claim on the bond. Another option would be revising the Ontario New Homes Warranties Plan Act to make the amount of a first-year budget deficiency exigible from the security held by Tarion.

Issue Sheet No. 12

	Governance
Title:	Quorum
Current: *(Condominium Act, 1998)*	50. (1) A quorum for the transaction of business at a meeting of owners is those owners who own 25 per cent of the units of the corporation, unless a bylaw registered in accordance with subsection 56 (9) after this subsection comes into force provides that the quorum is those owners who own 33 1/3 per cent of the units of the corporation.
Proposed: (Bill 106)	50. (1) A quorum for the transaction of business at a meeting of owners , other than a meeting of owners mentioned in subsection 42 (6), section 43 or subsection 45 (2) or such other meetings that are prescribed, is those owners who own 25 per cent of the units of the corporation, unless a by-law registered in accordance with subsection 56 (9) after this subsection comes into force provides that the quorum is those owners who own 33 1/3 per cent of the units of the corporation. 1998, c. 19, s. 50 (1). Same, annual general meeting, etc. (1.1) A quorum for the transaction of business at a meeting of owners mentioned in section 43 or subsection 45 (2) or such other meetings that are prescribed is, (a) those owners who own 25 per cent of the units in the corporation, if it is the first attempt to hold the meeting; (b) those owners who own 25 per cent of the units in the corporation, if a quorum is not present at the first attempt to hold the meeting and it is the second attempt to hold the meeting; or (c) subject to subsection (1.2), those owners who own 15 per cent of the units in the corporation, if a quorum is not present at the second attempt to hold the meeting and it is the third or subsequent attempt to hold the meeting.
Comments:	Reducing the quorum requirement for meetings which are being re-called due to a failure to achieve quorum is a huge benefit to condos. This ability will allow condos that have traditionally had problems meeting quorum for their AGM to proceed with their annual meeting.

	While this is a welcome change, we would welcome some additional clarification of this section to prevent future disputes of its interpretation. Firstly, this section should clarify whether a condo must continue to call a meeting until it successfully reaches quorum and the meeting can take place or if they can continue to operate in the absence of having achieved a proper quorum. Secondly, it should be clarified what the timeline should be for further attempts to call a meeting; must that meeting be in the same year or can the business be moved to the next year? Finally, clarification should be provided regarding whether the full notice of meeting package must be redistributed for each subsequent attempt or whether a 1-page meeting recall notice is sufficient.
Recommendation:	Amend Section 50 to clarify the above points.

Issue Sheet No. 13

	Governance
Title:	Requisitions
Current: *(Condominium Act, 1998)*	46. (1) A requisition for a meeting of owners may be made by those owners who at the time the board receives the requisition, own at least 15 per cent of the units, are listed in the record maintained by the corporation under subsection 47 (2) and are entitled to vote.
Proposed: (Bill 106)	`no change
Comments:	Section 46 gives the requisitionists certain powers including the ability to defer the matter for which a meeting is being requisitioned until the next AGM. As a practical matter the Corporation is then left to communicate with the entire 15% of the owners who signed the requisition. The form which is being prescribed should include on it the name of a "requisitioner" who is the authorized representative of the "requisitioners". In the absence of this the Corporation is left to speak to every owner who has signed as a requisitionist and in theory one owner could mandate the holding of a meeting even if the balance of those on the list have agreed to defer the issue until an upcoming AGM.
Recommendation:	Include a field on the requisition form to be prescribed for 'Authorized representative of the requisiton'.

Issue Sheet No. 14

	Finance
Title:	1st Year Budget Deficiency - Amount of Deficit
Current: *(Condominium Act, 1998)*	75. (1) The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description.
Proposed: (Bill 106)	75. (1) The declarant is accountable to the corporation under this section for (a) the statement mentioned in clause 72 (6) (e) that is required to be contained in the budget statement described in subsection 72 (6); and (b) the portion of the budget of the corporation for its first fiscal year required by subsection 83.1 (3) that represents the one-year period immediately after the registration of the declaration and description and that is determined in accordance with the regulations.
Comments:	The revised wording in section 75 is a dramatic improvement; however, the industry would be better protected if developers were responsible for a multiple of the first-year budget deficit, rather than just the amount of the deficit. This recommendation is based on the fact that, as the system currently exists, developers are incentivized to underestimate the first-year budget because a lower budget forecast results in lower monthly carrying costs for investors and a higher value on the units sold. For every dollar which the budget is under-estimated the developer recoups several dollars in increased unit prices. By making the developer responsible for a multiple of the first-year budget deficit this will allow the condominium to stage the increases to the fees and provide incentive to developers to produce and implement budgets based on practical forecasts of costs.
Recommendation:	Amend section 75 to make declarants accountable for the amount of the first-year budget deficit multiplied by 3 or more.

Issue Sheet No. 15

	Finance
Title:	Fiscal Year of a Corporation
Current: *(Condominium Act, 1998)*	N/A
Proposed: (Bill 106)	83.1 (2) The fiscal year of a corporation shall end on, (a) in the case of the first fiscal year after the registration of the declaration and description, the last day of the month in which the first anniversary of that registration takes place
Comments:	Under the Income Tax Act (Canada) a taxation year for a taxpayer may not exceed 53 weeks. Section 83.1(2)(a), as currently drafted, would create a fiscal year in excess of 53 weeks where a corporation is registered in the beginning of a month.
Recommendation:	The government may wish to consult with the Canada Revenue Agency to determine what, if any, action the CRA may take against a condominium corporation which has a first fiscal year that is longer than permitted.

Issue Sheet No. 16

	Dispute Resolution
Title:	Abuse of Tribunal
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	1.41 (1) The Tribunal may refuse to allow a person to make an application or may dismiss an application without holding a hearing if the Tribunal is of the opinion that the subject matter of the application is frivolous or vexatious or that the application has not been initiated in good faith or discloses no reasonable cause of action.
Comments:	While the tribunal can refuse an application if the subject matter of the application is frivolous or vexation, we would recommend providing for a procedure for an application to be refused if the applicant has been found to be a vexatious litigant. This is permitted in the Superior Court under section 140 of the Courts of Justice Act. That section permits a judge to make an order prohibiting a person from instituting a further proceeding, or continuing with a proceeding already initiated, without leave of the court. We are concerned that an applicant may bring many frivolous applications against a corporation, forcing the corporation to incur unnecessary legal expense.
Recommendation:	Amend section 1.41 by adding the following as section 1.41(3): "Where the Tribunal is satisfied, on application, that a person has persistently and without reasonable grounds, (a) instituted vexatious proceedings in the Tribunal; or (b) conducted a proceeding in the Tribunal in a vexatious manner, the Tribunal may order that, (c) no further proceeding be instituted by the person in the Tribunal; or (d) a proceeding previously instituted by the person in the Tribunal not be continued, except by leave of the Tribunal."

	Alternatively, this could be achieved through the Tribunal's rules of procedure.

Issue Sheet No. 17

	Dispute Resolution
Title:	Jurisdiction
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	1.42 (1) Subject to subsection (2), the Tribunal has exclusive jurisdiction to exercise the powers conferred on it under this Act and to determine all questions of fact or law that arise in any proceeding before it. Exception (2) The Tribunal shall not inquire into or make a decision concerning the constitutional validity of a provision of an Act or a regulation.
Comments:	The Tribunal's jurisdiction will extend to disputes to be prescribed. The Tribunal can issue an award of damages up to the greater of $25,000 or an amount to be prescribed. The question that arises is what happens with a dispute that is within the Tribunal's jurisdiction but a party is seeking an amount greater than the Tribunal can award. May that party proceed in the Superior Court or must they reduce their claim to the monetary threshold of the Tribunal? We would suggest that the latter would be highly inequitable.
Recommendation:	The revised Act should be clarified to provide that disputes that are otherwise within the Tribunal's jurisdiction but in which a party is seeking an award of damages greater than the Tribunal can award are to be heard in the Superior Court.

Issue Sheet No. 18

	Dispute Resolution
Title:	Exclusive Jurisdiction
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	1.42 (1) Subject to subsection (2), the Tribunal has exclusive jurisdiction to exercise the powers conferred on it under this Act and to determine all questions of fact or law that arise in any proceeding before it.
Comments:	We believe that parties should be able to opt out of the Tribunal's jurisdiction by mutual agreement. For example, they may prefer to submit their dispute to mediation and arbitration, or the courts. The dispute should not be mandated to be dealt with by tribunal if the parties agree to a mediated settlement. Because s.176 provides that "this Act applies despite any agreement to the contrary", parties cannot agree to resolve their dispute outside the tribunal unless 1.42 expressly provides that they may do so.
Recommendation:	Amend subsection 1.42(1) by adding "or an agreement to the contrary," after "Subject to subsection (2)"

Issue Sheet No. 19

	Dispute Resolution
Title:	Agreements Subject to Mediation and Arbitration
Current: *(Condominium Act, 1998)*	132(2) Subsection (1) applies to the following agreements: (4) An agreement between a corporation and a person for the management of the property.
Proposed: (Bill 106)	Unchanged
Comments:	As discussed by the Dispute Resolution Working Group during the Condo Act Review, disputes between condominium corporations and managers should not be subject to mediation and arbitration. Disputes as to performance issues are typically resolved informally between parties, but disputes over fees and negligence typically arise after the contractual relationship is terminated, removing the impetus to attempt to preserve the relationship by way of mediation. Additionally, claims against managers for negligence are defended by insurers and often result in commencement of third or subsequent party proceedings, which proceedings are best handled in court. Mediation and arbitration is not appropriate for these types of disputes and does not result in cost savings or any procedural advantage. Conversely, imposing mediation and arbitration in such disputes leads to extra cost and complexity for parties and, importantly, their insurers (causing additional upward pressure on premiums). In actual practice, the requirement to mediate and arbitrate disputes between condo corporations and management frims is largely ignored, as it often makes no practical or commercial sense. Even if clause 132(2)(4) is removed, mediation and arbitration are always available for suitable cases where the parties agree. Additionally, retaining clause 132(2)(4) is contradictory to s.34(3) of the proposed CMSA, which contemplates managers bringing actions in court for their fees.
Recommendation:	Delete section 132(2)(4)

Issue Sheet No. 20

	Dispute Resolution
Title:	Recovery of Costs
Current: *(Condominium Act, 1998)*	134 (5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses payable for the unit and the corporation may specify a time for payment by the owner of the unit
Proposed: (Bill 106)	134(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the contribution to the common expenses payable for the unit. Additional costs of owner (6) If an owner of a unit obtains an award of damages or costs against a corporation in an order made under subsection (1), the owner is entitled to recover from the corporation any additional actual costs incurred in obtaining the order.
Comments:	We believe that the proposed sections 134(5) and (6) are intended to permit a corporation or an owner who successfully receives a compliance order against the other party to achieve full cost recovery. The wording of these provision is asymmetric, however, so it is unclear whether this is in fact the case. An additional issue is whether the government intends for someone who successfully defends against a compliance application to be entitled to full cost recovery. As drafted, sections 134(5) and (6) permit full cost recovery only where a party obtains an award under subsection 134(1). A party who successfully defends against a compliance order will likely only receive a partial indemnity cost order. Is this the government's intention?
Recommendation:	Amend section 134(5) by adding "under subsection (1)" after "damages or costs in an order made".

Issue Sheet No. 21

	Licencing
Title:	Investigation of Complaints
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 56. (1) If the registrar receives a complaint about a licensee, the registrar may request information in relation to the complaint from any licensee.
Comments:	We would like to know if the government intends to request ACMO's ethics files relating to individuals applying for licensure under the Condominium Management Services Act.
Recommendation:	

Issue Sheet No. 22

	Licencing
Title:	Notice to the Registrar
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 45. (1) Every licensed condominium management provider shall, within five days after the event, notify the registrar in writing of, (a) any change in address for service; and (b) the date of commencement or termination of the employment of every condominium manager that the provider employs and, in the case of the termination of employment of a condominium manager, the reason for the termination.
Comments:	We would suggest that providing notice within five days is an extremely tight timeline and will not be practical in many cases. Some management companies employ hundreds of managers, and providing notice when each is hired or terminated within five days of each manager being hired or terminated will be an excessive administrative burden. Managers are already required by 45(2) to report who they are working for and give notice when that employment is terminated. There is no reason to duplicate this reporting requirement for the providers. Additionally, providing the reason for termination could lead to disputes in situations where the reason given to the manager differs from what is reported to the registrar. A reason for termination should only need to be provided in circumstances which might impact upon the manager's ability to remain licensed (e.g., they are fired for theft).
Recommendation:	1) The timing for giving notice should either be extended (we would suggest within 30 days) or provided in the Regulations (to give flexibility if the length of notice proves unworkable).

	2) Subsection 45(1)(b) should be deleted, or alternatively, providers should not have to provide the reason for termination unless it was for a reason which may impact upon a manager's licensure.

Issue Sheet No. 23

	Licencing
Title:	Consent to Change of Directors and Officers
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 45(3) A licensed condominium management provider that is a corporation or a partnership shall not change its officers or directors except with the prior consent of the registrar and shall, after receiving that consent, notify the registrar in writing of the change within five days after making it.
Comments:	We do not see the purpose why the registrar must give prior consent for a change in the directors and officers of a management provider. The CMSA will provide that notice must be given if the principal condominium manager changes (s. 49(1)(b)). We believe this should be sufficient. If prior consent will be required it should not be unreasonably withheld. The DAA and the registrar should recognize that some condominium management firms are subsidiaries of national or even international parent corporations and the directorship of a parent corporation would not impact the daily operations of a subsidiary management company. We note that a major change in shareholdings of a corporate licensee requires notice to (but not consent of) the Registrar, and submit that changes in directors be treated similarly. In the case of new directors or shareholders, the Registrar may refuse renewals or conduct inspections or other proceedings.
Recommendation:	Delete section 45(3) of the CMSA.

Issue Sheet No. 24

	Licensing
Title:	Reporting Requirements
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 Sections 45(1(b), 45(3), 45(4), 46 and 47
Comments:	We would suggest that the information required to be provided by these sections is far too detailed and will be onerous to provide.
Recommendation:	Provide that the registrar may demand this information and that providers are required to produce it upon request, but remove the obligation on providers to report this information proactively.

Issue Sheet No. 25

	Licensing
Title:	Financial Statement Reporting
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 50. (1) Every licensed condominium management provider shall, when required by the registrar, file a financial statement that shows the matters specified by the registrar and that is signed by its principal condominium manager and certified by a person licensed under the Public Accounting Act, 2004. Confidential (2) The information contained in a financial statement filed under subsection (1) is confidential and no person shall otherwise than in the ordinary course of the person's duties communicate the information or allow access to the financial statement.
Comments:	Providing detailed financial reporting can, in many circumstances, be extremely expensive. Each request by the registrar will need to be certified by an accountant. Depending on the scope of the registrar's request this may cost several thousand dollars. We would suggest that this section be deleted or, if it is left intact, the registrar exercise this power with caution and request no more information than is necessary to ascertain the financial stability of a provider. We would note that providers do not hold funds in trust for their clients. While we understand the need for consumer protection, detailed financial reporting should not be necessary for our industry. If it is absolutely necessary it should only be required at reasonable levels that balance the need for information with consumer protection.
Recommendation:	Delete section 50 of the CMSA.

Issue Sheet No. 26

	Licensing
Title:	Turnover of Records
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 53(1) Subject to the regulations, every licensee that provides condominium management services to a client shall immediately transfer to the client all documents and records relating to the client upon termination of any contract for the condominium management services provided. No pressuring (2) No licensee shall retain anything that the licensee is required to transfer to a client under subsection (1) as a means of pressuring the client to fulfill contractual obligations to the licensee.
Comments:	The concern with this provision is that management companies need to retain some records of the corporation in order to complete the financials for the period prior to their termination. Section 53, as currently worded, requires the immediate transfer of all records. If termination is made effective immediately, a manager will be required to immediately turn over all records and will be unable to complete some of its duties.
Recommendation:	Make section 53(1) subject to subsection 48(2) (requirements for management contracts) and delete the words "immediately" and "all". We would recommend defining the time frame for the turnover of records in the Regulations. For example, the Regulations may stipulate that a manager must within 5 days turn over all records save for financial records required to complete their financial reporting, and those records must be turned over within 60 days.

Issue Sheet No. 27

	Licensing
Title:	Turnover of Records
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 53(1) Subject to the regulations, every licensee that provides condominium management services to a client shall immediately transfer to the client all documents and records relating to the client upon termination of any contract for the condominium management services provided.
Comments:	The concern with this section is the requirement to turnover "ALL" records. condominium management companies routinely keep copies of the financial records that they turnover to their clients on termination. While the condominium is entitled to their documents the term "all" could be interpreted that the manager is not permitted to maintain copies of information or records produced by them. This right should be preserved in the CMSA.
Recommendation:	Make section 53(1) subject to subsection 48(2) (requirements for management contracts) and delete the words "all". The management company should be entitled to retain copies of work completed by the manager or accouting records in the event that they need to respond to inquiries after the termination of the contract of in the event of litigation.

Issue Sheet No. 28

	Licensing
Title:	Inspections
Current: *(Condominium Act, 1998)*	
Proposed: (Bill 106)	Condominium Management Services Act, 2015 Section 59
Comments:	Inspectors are given broad and potentially disruptive powers under section 59. For example, an inspector is empowered to seize electronic devices. If a management provider's computers were to be seized they would be unable to continue to operate. While we recognize that other industries' regulators have similar powers, the powers granted to inspectors under the CMSA are actually broader than most industries, in that an inspector under the CMSA can conduct an inspection for ensuring compliance with any part of the Act or the regulations. We want to ensure that this power is used responsibly and only in appropriate circumstances. Unlike lawyers or real estate agents, condominium managers do not hold trust funds.
Recommendation:	We would suggest that some of the more intrusive powers granted to an inspector should only be used in the most extreme and exigent of circumstances.