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Corridor Refurbishment Bid-Rigging Lawsuit

The wheels of justice turn slowly, but they keep turning. Condo corporations affected by the alleged bid-rigging conspiracy between several GTA refurbishment contractors between 2006 and 2016 can be optimistic there is relief ahead, thanks to a proposed class-action lawsuit already underway.

What is Bid Rigging?

Here's a brief history, a quick update, and a glimpse of what comes next.

But first, let's define bid-rigging, which is any secret agreement among suppliers as to which of them will win a contract. For example, one supplier might agree not to submit a bid, withdraw a bid, or submit an agreed-upon bid. This harms competition and leads to higher prices or inferior services.

In 2016, as part of a major investigation into alleged bid-rigging in condo refurbishment projects, the federal

Competition Bureau ordered over 140 GTA condo corporations to produce documents related to their projects. These affected corporations incurred management time and legal costs to gather and provide the required bid records, contracts and chronologies.

Then things went quiet. Most of us assumed the investigation went cold or uncovered no criminal activity.

Charges Laid

But five years later, in April 2021, Competition Bureau laid criminal conspiracy and fraud charges against three GTA refurbishment contractors and their owners. A fourth firm was charged with conspiracy offences under the Competition Act. The Bureau alleged that the accused parties conspired to commit fraud and rig bids for refurbishment contracts with GTA condominium corporations between 2009 and 2014.

Speculation also surfaced that the investigation arose from a whistle-blower's tip, likely from someone inside the refurbishment industry.

Class-Action Lawsuit Filed

A proposed class-action lawsuit was filed within a month after charges were laid against the alleged conspirators and some third-party suppliers. The lead plaintiff is TSCC #1654, which had been ordered to submit documents to the Competition Bureau's investigation after undertaking a refurbishment project that was bid upon and performed by some of the alleged conspirators. If certified as a class-action suit as proposed, this lawsuit will assert the rights of all similarly affected condo corporations across the province.

In January 2022, less than a year after being charged, one of the alleged conspirators pleaded guilty to a conspiracy charge. That contractor was fined





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\$761,967, reportedly a lenient sentence in consideration of the contractor agreeing to pay a settlement of \$555,000 to the proposed class-action lawsuit and to provide helpful information for the criminal prosecution and the civil lawsuit against the remaining defendants.

In a candid interview in the *Globe and Mail*, the contractor's principal explained the scope of the alleged conspiracy, his role in it and his regret in having participated. The interview sheds some light on the investigation, the prosecution and the contractor's choice to cooperate with law enforcement from an early stage once caught. While this contractor's early conduct was wrong, one might agree it took courage to do the right thing in the end.

What Happens Next?

With one defendant's guilty plea and partial settlement on the table, the lawsuit now advances to a motion asking the court to certify the case as a class action against the settling defendant and to approve the settlement. This motion will be heard in September 2022. The lawsuit against the remaining defendants (and some new ones) will then proceed. The defendants have made no admissions of wrong-doing, and none of the allegations against them have been proven in court.

Condo corporations with potential claims arising from alleged bid-rigging in refurbishment projects were notified this summer (directly and through their managers and through advertisements

in ACMO newsletters) of their right to opt out of the lawsuit, presumably, so they may start their own lawsuits. Corporations that did not opt out by the August 2, 2022 deadline automatically remain part of the existing proposed class action and may be entitled to claim compensation through this case later.

While condo corporations need not take any action at this time to preserve their right to make claims through the proposed class action, it is wise to begin preparing. Corporations and their managers should gather and preserve the documentation related to any corridor refurbishment bid upon or performed by the alleged conspirators from 2006 to May 2022, including:

- Tender documents;
- Contracts; and
- Invoices and proof of payment.

To evaluate whether any given corporation may have grounds for a claim through the lawsuit, check whether the tender or contract documents mention the alleged conspirators or suppliers. They are listed in the statement of claim available on the class action website mentioned below. Note also that the timeframe for the class action is larger than the timeframe of the Competition Bureau charges and covers refurbishment projects undertaken after 2006 to as late as May 2022. So don't be too hasty to rule out the possibility of making claims through the class action.

Corporations served with the Competition Bureau's production order in May 2016 should preserve a copy of the mate-

rials they submitted in response, which will include most info needed to support claims. In addition, gather any invoices for administrative or legal work to prepare the response to the production order, as those costs are also potentially recoverable.

Boards and managers wishing to receive further information about the case and register for updates should visit the class action website at www.sotosclassactions.com/cases/condominium-corporations/.

Beyond providing potential compensation to condo corporations affected by the alleged refurbishment conspiracy, the class action lawsuit will deter suppliers from engaging in illegal anti-competitive behaviour that victimizes condo unit owners with inflated costs.

And while we wait for new requirements for procurement processes to be finalized and come into force under the *Condominium Act, 1998*, education for directors and managers remains paramount. Luckily, the Competition Bureau released a Collusion Risk Assessment Tool in mid-June 2022 to help procurement agents assess and minimize the risk of impacts from anti-competitive behaviour. The tool is available on the Bureau's website at www.competition-bureau.gc.ca and is worth reviewing. ■

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