

# Condominium Act



## Condo Reform – 2020 is the Year!

As we all know, the last reforms to the *Condominium Act, 1998* (the “Condo Act”) were proclaimed on November 1, 2017. A considerable number of the reforms that received Royal Assent on December 3, 2015, remain on the books awaiting proclamation.



Armand  
Conant

This status quo changed with the government’s introduction of Bill 159, the *Rebuilding Consumer Confidence Act, 2019* on December 5, 2019. It is proceeding at rocket speed and will impact at least ten statutes that deal with consumer protection including our Condo Act.



Inderpreet  
Suri

In this article, we will summarize some of the proposals that the government has already enacted and those that we can look forward to in 2020. We have grouped these into four stages:

### Stage 1 – Condo Act Prescribed Forms

Effective January 1, 2020, the Ministry delegated responsibility for 17 of the prescribed forms to the Condominium Authority of Ontario (CAO), with two more to be delegated later this year. These include the proxy form, status certificates, preliminary notices and notices of meetings.

According to the Ministry’s announcement, this delegation is meant to provide “*easier access and usability of frequently used condo forms for condo owners, corporations, purchasers and mortgagees*”.

The forms are available on the CAO’s website: <https://www.condoauthorityontario.ca/en-US/resources/government-of-ontario-forms/>

For many of us in the condo community, the form that needs the most assistance is the proxy form. The new form was enacted on November 1, 2017, and then due to the many problems in understanding and using it, the government modified it in May of 2018. However, it is still difficult to work with. The CAO is doing a good job explaining many condominium matters and issues, including the proxy form, and there is a wealth of information on their website. However, we will have to see the eventual extent of CAO’s authority as the proxy form is in desperate need of changes.

### Stage 2 – CAO and Condominium Management Services Act

Bill 159 amends about 10 statutes, among them, are proposed adjustments to the Minister’s relationship with the CAO and its Board. It is also proposing some changes to the *Condominium Management Services Act, 2015* and the *New Home Warranty Plan Act*, amongst others. For these changes, the government quickly moved to hearings before the Standing Committee of



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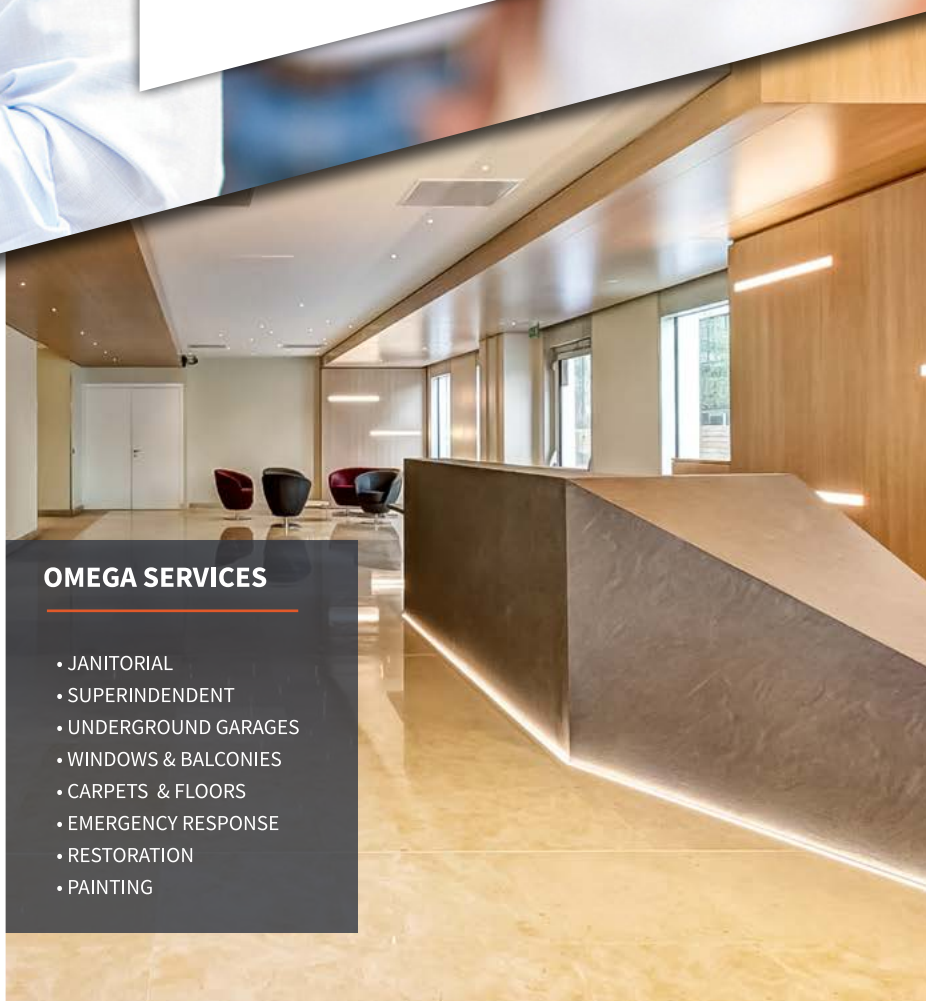
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Justice Policy on January 20th, at which Armand Conant presented on general reforms to the Act.

### Stage 3 – (a) Statutory Nuisances, Annoyances, and Disruptions; and (b) Increase in the Jurisdiction of the CAT

The government announced that it wished to expand the scope of disputes that can be heard by the CAT (more than just Sec. 55 access to records) and in a staged process, with a proposed enactment date of July 1, 2020.

The first change is to proclaim into force the proposed Sec. 117. Subsection 2, for the first time statutorily, will prohibit people from carrying on activities that: (a) results in unreasonable noise that is a nuisance, annoyance or disruption to a person in a unit, the common elements or assets of the corporation; or (b) other prescribed nuisances, annoyances and disruptions. These are in addition to restrictions and prohibitions that corporations have in their documents.

O. Reg 24/01 will be amended to set out the list of prescribed nuisances. These are odour, smoke, vapour, light, vibration and infestation.

In addition, O. Reg. 179/17 will be amended to expand the scope of disputes that the CAT can hear, which currently is solely for Sec. 55 access to records. The proposed expanded scope will be for:

- (a) the nuisances, annoyances and disruptions described above;
- (b) other nuisances, annoyances or disruptions as set out in the corporation's documents;
- (c) pets, other animals, vehicles, parking and storage (in the corporation's documents); and
- (d) indemnification or compensation

for these disputes if in the corporation's documents.

These reforms and the increase in jurisdiction of the CAT are welcome, but further details and clarification are required in order to minimize disputes before they go to the CAT. ACMO and the eight Ontario Chapters of CCI are working on submissions to the government. These suggestions were raised by Armand at the Standing Committee on January 20th.

The essence of the concerns to date is the lack of definition of the types of nuisance, annoyance and disturbance. For example, what kind of light qualifies as a nuisance – indoor or outdoor light? What intensity of light? We have a good idea as to the meaning of “reasonable” but not “unreasonable”. Also, the term nuisance has a legal meaning but not annoyance or disturbance.

Currently, the CAT can only award costs in exceptional or extraordinary circumstances. Many in the industry believe that this should be amended to allow certain levels of costs, keeping in mind one of the CAT's goals – to reduce the financial imbalance in disputes between owners and their corporation.

### Stage 4 – Public Consultation for other Reforms – 2020

The Ministry will be consulting with the public about a whole host of other reforms that have not yet been proclaimed. These include:

- Financial aspects of corporations including reserve fund contributions, the manner in which they can be used and how reserve fund studies can be conducted;
- Chargebacks to common expenses;
- Procurement standards and procedures;
- Changes related to interest, etc. made on new projects that are cancelled;

• CAO to develop a condo guide for buyers and require developers to provide it to their purchasers; and

• Clarifying the processes for mediation or arbitration between corporations and owners.

The Ministry has already scheduled a first consultation roundtable for February 20th and we will be there.

As can be seen, there is considerable movement from the government to proclaim more of the reforms that received Royal Assent in 2015. ACMO and CCI will be at the table and providing any assistance that we can to the government, all with the view to making our industry and condominium communities the best they can be. Stay tuned. ■

**Armand Conant**, B.Eng., LL.B., D.E.S.S., heads up the condominium law department of the full service law firm of Shibley Righton LLP, and represents numerous condominium corporations of all types across Ontario. Armand resides in Toronto, is a Past-President of the Canadian Condominium Institute (Toronto), where he also serves on its Board of Directors and is Chair of the joint ACMO and CCI (Toronto) Legislative Committee, which has prepared and submitted an extensive legislative brief to the Ontario government with recommendations for changes to the *Condominium Act, 1998* (the “Act”).

**Inderpreet Suri** is an associate at Shibley Righton LLP and works exclusively with the condo law group at Shibley Righton. She attended law school at Queen's University and articulated with the firm from 2017–2018. Inderpreet was called to the Bar in 2018. [shibleyrighton.com](http://shibleyrighton.com)



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