

## Legal: Condo Cases

### **Straight From The Source** ***An Interview with Antoni Casalnuovo***

*Hogan et al v. Metropolitan Toronto Condominium Corporation No. 595* - <http://canlii.ca/t/g7shd>

#### **1. What was this case about?**

This case was about a group of unit owners who were required to take their condominium corporation to Court over the Board of Directors' refusal to grant them a meeting to vote on a proposed project in their lobby pursuant to a Notice made under section 97(3) of the *Condominium Act*, 1998 (the "Act").

Within two weeks of the condominium corporation issuing their Notice, approximately 30% of the unit owners submitted a requisition for a meeting. The Board of Directors declined to call the meeting, citing technical defects in the form of requisition.

#### **2. What required this case to go to Court?**

The Board of Directors ignored the will of the community as demonstrated by the very strong support shown by owners in exercising their self-help remedy to requisition a meeting. The intention of this remedy is specifically for the Board of Directors to involve and take directions from the community when certain decisions are being made.

#### **3. What were the main issues before the Court?**

The main issue before the Court pertained to the form, content and use of the Section 46 requisition.

#### **4. What were the unique challenges of this case?**

(1) Convincing an elected Board of Directors that they remain accountable to the community. Unfortunately, the Board could not be convinced of this fact without being directed by the Courts;

(2) Each owner submitted an identical requisition with a single signature. While perhaps unusual that each page of a requisition contained only one signature, it is not unusual for a requisition to be submitted on multiple identical pages with, for example, 10 signatures on each page; and

(3) Some unit owners signed in "print" rather than "cursive" writing. This point is not novel. Many years ago, as an articling student, I was required to research what is an acceptable signature. The law is quite clear on this point that a signature is an individual's "mark". This can be an "X", it can be the person's name, initials or other mark. It can be printed or in cursive.

## 5. What can condominiums learn from this case?

A requisition is a harbinger from within the condominium community.

Condominium corporations can learn that when faced with a requisition for a unit owners meeting, the substance of the request should not be trumped by the form of the requisition. In simpler terms, do not disregard a requisition for purely technical reasons. Rather, if there are sufficient number of people who are requesting a meeting of unit owners, a Board of Directors should not stand in the way from holding same.

A piece of advice I always give to clients is that if this matter ever appeared before Court, a Judge is not likely to be harsh or critical of the Board of Directors in promoting democracy in their community and permitting the unit owners of the community to get together at a meeting, discuss a problem and possibly hold a vote.

## 6. What was the outcome of this case?

The Court was critical of the Board. The Court had little difficulty siding with the unit owner group and ordered the condominium corporation to hold a meeting within 35 days from the date of the Judgment. The Court dismissed all arguments advanced by the condominium corporation as reasons why the unit owner meeting should not take place.

The Court further recognized that the Condominium Act is consumer protection legislation that should be given a broad and liberal interpretation in order to best fulfill its purposes. The Court recognized democracy as the fundamental root of the Act and in the governance of a condominium community.

This case serves as an indication that a small technical issue with a requisition should not stand in the way of promoting democracy within the community.

---

*Antoni Casalnuovo is a litigator with Elia Associates PC, Barristers and Solicitors. Antoni practices civil litigation with a focus on condominium law. CONDOCENTRIC.ca*

THE VIEWS PRESENTED IN THE ABOVE ARE THE PERSONAL VIEWS OF THE INDIVIDUAL INTERVIEWED AND ARE NOT THOSE OF THE TORONTO & AREA CHAPTER OF THE CANADIAN CONDOMINIUM INSTITUTE. THE INFORMATION PRESENTED IS NOT A BINDING LEGAL OPINION AND READERS SHOULD SEPARATELY REVIEW THE CASE CITED TO ASCERTAIN ANY PRECEDENTIAL VALUE BASED UPON THE JUDGE OR HEARING OFFICER'S PRECISE AND COMPLETE REASONS FOR THE DECISION.