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Pets & Condos

Ontario's C.A.T. Gets Upgraded Claws

Queens Park Has Taken a Decades-Old Piece of Legislation – *The Condominium Act of Ontario, So 1998, C. 19* – and "Re-Purposed" It

How would you feel if a stranger, a professed expert on animals, were to tell you that Duke, your faithful and loyal hunting dog of some considerable years, had really been a "cat" all along?

Well, recently Queens Park did something similar in the condominium space. They took a decades-old piece of legislation -- the Condominium Act of Ontario, SO 1998, c. 19 -- and "re-purposed" it.

Most condo lawyers and managers had always felt the true purpose of that venerable old statute was mainly administrative -- to delicately balance the interests of both owners and board directors, doing justice to both, while offending neither.

Nope. Turns out that, in an era of open "non-binary" choices, the Condo Act had really been a piece of "consumer protection" legislation all along, just waiting to come out of the closet and reveal its true nature to the world.

Queen's Park further underscored the true purpose of their 'new and improved' Act by creating a Tribunal (not technically a court) with the intention that, over the fullness of time, as its powers were progressively broadened by the legislature, almost every possible condo-related dispute you might think of would ultimately be disposed of by its Member-Adjudicators (not technically judges).

The three "phases" of a typical C.A.T. ("Condominium Authority Tribunal") process -- negotiation-mediation-adjudication -- look great on paper, as all government initiatives do. But in real life the first phase, negotiation, usually goes nowhere. In real life, the parties by that time have already exchanged a great deal of high-energy interpersonal communication, and are more than ready to throw down and have a dustoff. (One wonders if the C.A.T. will eventually remove that first stage? Or at least present an option to bypass it?)

Proponents of the new C.A.T. system say that the Tribunal is doing its job, and moving disputes promptly through the system, with reduced costs.

For example, one case study posted online demonstrated how, in two almost-identical situations, both of which reached the same essential conclusion, the "post-C.A.T." approach was indeed faster and more efficient (See https://condolaw.to/condominium-authority-tribunal/).

Critics of the new system are not so sanguine, however.

For one thing, even though the C.A.T. has its own procedural rules, just like a proper court, many lawyers acting for condo clients are circumspect about whether their clients are enjoying the same level of jurisprudential oversight they might have expected in a more formal setting?

Those same critics would dismiss the study cited above as an outlier. They

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would argue that the C.A.T. process, by its very nature, allows the back-and-forth between parties -- the "sturm und drang" if you will -- to go on for literally months. During which time -- time potentially being docketed by lawyers acting on those cases -- the parties (owners mostly) are given free reign to change their requests; acquire new arguments; discard old ones; reshuffle the issues; file new documents willy-nilly; and generally create procedural mayhem.

Speaking of costs, this remains a very delicate topic among both proponents and critics of the new system. As currently written, the C.A.T.'s internal rules permit it to award costs only in "exceptional" circumstances. An exact definition of "exceptional" is not given, but the obvious assumption can be made that such circumstances would be the exception to the rule, not the norm.

Until this is resolved, C.A.T. matters are therefore being disposed of at the pleasure (or, rather, displeasure) of the affected condo owners as a group, which is where the buck ultimately stops. A indignity further compounded by the fact that the Tribunal itself is also funded by those very same owners, based on a tithe-like fee schedule applied to all condo corporations across Ontario.

At the end of the day, however, a lawsuit -- whether it is called an action or an application or a complaint -- is still a lawsuit. The volunteer directors of the affected corporations (in almost all cases) would be taking needless and inappropriate risks to treat a C.A.T. proceeding with anything less than their full and undivided attention.

It is also noted that, notwithstanding the blog comparison above -- and given the extreme largesse granted Applicants to electronically file hither and yon as the mood strikes -- a protracted C.A.T. case, even one perceived to be simple, can run up legal costs a heck of a lot faster than

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a quick afternoon yak at the local Small Claims Court.

Did you hear the one about the condo owner's dog who jumped into his master's Tesla and accidentally switched on the self-driving feature? The poor creature ended up in a parking space assigned to another owner. Who was quite displeased.

The appeal of the "teaching-aid" above lies not in the punchline - there is none - but in the elements of the tale. Cars, pets, and parking/storage areas -- plus chargebacks relating to these items -- this year demarked the first rollout of the extended jurisdiction of the C.A.T. Which means that, if a party tries to take these matters directly to a more senior forum without going to the C.A.T. first, the action will likely be rejected.

When all is said and done, however, the greatest criticism of the new process is that it unfairly and needlessly empowers those members of a condominium community -- referred to in the industry as "condo commandos" -- who have made it their life's purpose to be the biggest thorn in the side of their condo boards they can possibly be.

This issue is far from trivial. A casual look at the approximate 190 decided cases now on file with the C.A.T. shows a 'statistically significant' proportion of instances where the Adjudicators are compelled, in the body of their findings, to note a history of "animus" or similar discord between the parties; and even to consider whether or not the requested documents (which, before the seachange above-noted, were the main focus of the C.A.T.'s jurisdiction) were genuinely being sought in the Applicant's legally-required "capacity as owner" -- or for some other opaque, perhaps more nefarious, purpose?

This uncomfortable dilemma often arises when, upon the plain facts, the Applicant clearly has no obvious interest in the summoned document per se, but rather sees it as something to be potentially shared with the rest of the owners -- with an appropriately inflammatory note attached -- in the interest of fomenting some sort of 'anti-board' movement, or perhaps a bloodless coup.

Irony abounds. Especially when you consider that, in the not-so-far future, the C.A.T. itself will likely have full jurisdiction over intra-community condo agitators ("nuisances") stirring up their neighbours with the very same documents the C.A.T. itself granted them in the first place.

If these issues above were not fully compelling on their own, there is also the fact that the C.A.T. has absolutely no fear of going where angels fear to tread -- and, when the occasion warrants it, forcibly bending the day-to-day governance of Ontario condos to its iron will.

The instances below are already well known to lawyers and management, but are nonetheless worth a nod:

In Hawryliw v. Toronto Standard Condominium Corporation No. 2309, 2021 ONC.A.T. 12, the owner/Applicant attempted to use the C.A.T. to obtain specific still photos to be lifted off security footage which, based on the evidence, may or may not have even been technically available to the condo corporation at the time of the actual hearing. Even to a non-lawyer reading the case, the convoluted reasoning used by the Adjudicator (to determine that such images were indeed within the full and proper jurisdiction of the Tribunal) still seems just slightly forced.

The condo was ultimately ordered to produce the requested items as summonable documents under the Act.

One almost has to wonder aloud -- based on comments observed in the body of the decision itself -- whether that unusual and counter-intuitive ruling was somehow a reaction to the fact that condo management (for the first portion of the 2-part Tribunal process) had seemed to ignore or otherwise disrespect the Authority by not attending, or even acknowledging, the first hearing?

And in Boodram v. Peel Standard Condominium Corporation No. 843, 2021 ONC.A.T. 31 -- perhaps one of the C.A.T.'s most controversial decisions to date -- the Adjudicator slyly commented that the only mention of "policies" in the Condominium Act was in reference to "insurance policies" .... ergo, management policies which had never been formally solidified into Rules (via the pro-forma process meticulously detailed in the Act) were simply not enforceable.

The problem being, of course, that virtually every condo in Ontario has policies to help them interpret and enforce their Rules. In fact, in many condos, properly-created Rules under the Act even specify within their text that later policies (sic) will need to be formulated to help clarify them!

While a windfall for law firms trying to help their clients make lemonade from lemons, this specific decision (Boodram) raises important questions about how deeply governments can interfere with condo corporations trying to, essentially, manage small villages with volunteer directors under the auspices of non-profit corporations that have almost no means to recoup HST on outgoing expenses ... before something ultimately breaks?

On a broader scale, it is also important to recognize that, implicit in the ever-widen-

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ing scope of the C.A.T.'s jurisdiction, is the notion that any problem voters can create, governments can solve.

Yet there is precious little evidence to support that broad postulate. In Ontario or anywhere else.

By implication, the C.A.T. itself, and its own governing body, the Condominium Authority of Ontario ("C.A.O."), should somehow be held to a higher standard than the petty squabbles and bickering which demark most daily, real-life, experiences for Ontario's over one million condominium owners.

Yet – the proverbial elephant in the room – in April of 2020 the majority of the C.A.O.'s very own board up and quit with no explanation offered or (given the inner workings of government) even really expected. (See https://www.theglobeandmail.com/real-estate/toronto/article-silence-descends-after-condominium-authority-board-resignations/)

Ultimately, the success or failure of Ontario's highly aggressive solution to the travails of condo ownership will depend on whether or not these new procedural straitjackets that our politicians are so patiently weaving around condo corporations and boards turn out to be more (or less) efficient than those which existed beforehand.

As bestselling author Vince Molinaro remarked, "What worked in the past isn't going to work in the future. More is expected of leaders today." Condo owners and boards have to hope that Queens Park and the C.A.O. have somehow seen beyond the coming twists and turns, and are more than ready for whatever lies ahead. Otherwise we will inevitably end up right back where we started.

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