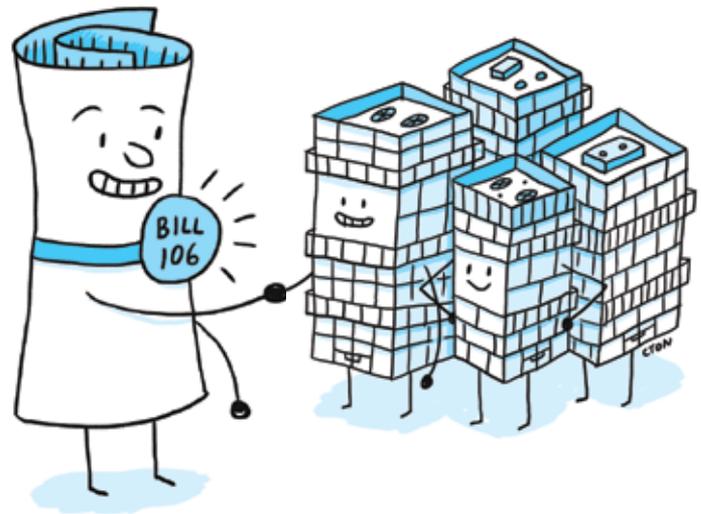




The Future of Administrative Authorities

AA's create adaptability and flexibility in the face of rapid changes in the condominium industry



2015 was a certainly a year of significant changes for the condominium industry, and the pace of change will continue until Bill 106 is proclaimed.

In our last article (fall 2015 issue) we looked at the changes being proposed by Bill 106 with respect to the governance of condominium corporations in Ontario (the government called this theme “How Condos are Run”).

As many may know, Bill 106 actually consists of two different statutes: (a) the Protecting Condominium Owners Act, 2015 (“POCA”), which significantly and dramatically amends most of the Condominium Act, 1998 (the “Act”); and (b) the Condominium Management Services Act, 2015 (“CMLA”), which deals with the licencing and regulating of condominium property managers in Ontario.

Introduced in May 2015, the Bill passed

2nd Reading in mid-September. Then, in October and early November, the Standing Committee on Finance and Economic Affairs held hearings, at which stakeholders and individuals had the opportunity to make suggestions and comments on Bill 106 (maximum of about 8 minutes per speaker). In preparation for speaking at the Standing Committee, the Joint CCI (Toronto)/ACMO Legislative Committee prepared and submitted a 24 page brief containing concerns and suggested changes to Bill 106. Then, representatives CCI (Toronto) and ACMO spoke at the hearings. The Standing Committee deliberated on the submissions from all stakeholders and then prepared its report.

The Committee’s report was submitted to the government, changes were made to the Bill, and then, on December 2nd, it passed Second Reading. On December 3rd, Bill 106 received Royal Assent. This

does not mean it is now law. That happens when Bill 106 has been proclaimed, and that will not occur until the Regulations have been completed. We hope that everything will be done by the end of 2016 or early 2017 (although we understand that there is a chance that parts may be proclaimed during 2016). Also, these two statues will not necessarily, and most likely will not, come into force at the same time.

Regulations will play an incredibly broader role under POCA. It adds nearly 30 new areas in which the government may enact regulations, such as the form and content of declarations, the training required of directors and the delivery of certain documents.

The purpose of deferring so much of the application of the law to its regulations is to give the government greater flexibility in amending the law in the future. Laws



It adds nearly 30 new areas in which the government may enact regulations, such as the form and content of declarations, the training required of directors and the delivery of certain documents

can only be amended by acts of the legislature, while regulations can be amended by Cabinet. If changes to the Regulations are required in the future (for example, to clarify them or to address an issue which was not anticipated) it is hoped that this flexibility will allow the government to address the needs of the condominium industry more quickly.

The Ministry of Government and Consumer Services will be seeking input from stakeholders and the public, and will continue its transparent reform process (e.g. publishing the draft regulations at some point). CCI and ACMO will be monitoring the progress, and have advised the Ministry that they remain ready and willing to provide any assistance the government may need.

Although most of the changes that were made to Bill 106 (between second and

third Reading) were more of a cleanup or clarification nature, one significant change was the elimination of a condominium corporation's right under s. 134 of the Act to terminate leases and evict tenants for breach of the Act, or the corporation's declaration, by-laws and rules. It was decided that only the Landlord and Tenant Tribunal should have the jurisdiction to terminate a tenancy under the *Residential Tenancies Act, 2006*.

Administrative Authorities

In previous articles, we wrote about the government creating two new and separate Administrative Authorities (AA's). One is for the Act (condo owners, corporations, developers, etc.), and we have referred to it as the "Condominium Authority" or "Condo Authority". It will handle functions under the amended Act, including providing director education, administering a registry of, and data about,

condominium corporations, and oversee a specialized Tribunal to adjudicate certain disputes, especially between condo owners/residents and their corporations. The other Authority is for the licencing and regulation of condo property managers (the "CMLA").

While the drafting of the Regulations is ongoing, the government is moving forward with the creation of these two AAs. In this article, we will explore them in greater detail...

The first AAs were created in Ontario in 1976 (the Board of Funeral Services and Tarion Warranty Corporation). However, their use was limited until the passage of the *Safety and Consumer Statutes Administration Act* in 1996, which allowed the Lieutenant Governor in Council to delegate its powers and duties to authorities in order to administer certain statutes. Since that time, a number of AAs have been created, including the Electrical Safety Authority (ESA), the TSSA (Technical Standards and Safety Authority, TICO (for tourism), RECO, the Vintners Quality Assurance (VQA), and recently the Ontario Film Authority. This growth in use of AAs reflects a broader government trend towards their use as specialized regulatory bodies for service delivery for specific industries, and their creation and use is expected to increase significantly in the coming years.

ACMO

I MANAGE THE
DAY TO DAY
SO CONDO LIFE
IS ENHANCED
DAY AFTER DAY.

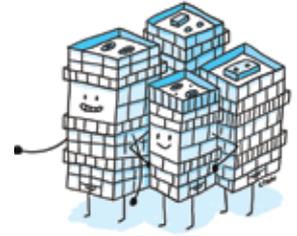
Pat Parrish,
Registered Condominium Manager

As a Registered Condominium Manager, I believe it's very important to develop and maintain solid working and professional relationships to work as a team with my condominium boards.

To build the trust and confidence required to do that, you have to know the ins-and-outs of the industry. The property management company I work for requires that its managers achieve the RCM designation from ACMO. ACMO's education program practices a solid understanding of building systems and maintenance, accounting, communications, project planning and condo law. All of which are essential for an efficient, well-managed operation. My RCM designation gives the condominium board, and owners, the confidence that their home is being professionally managed.

VISIT ACMO.ORG TO LEARN MORE ABOUT THE RCM DESIGNATION.

RCM



This growth in use of AAs reflects a broader government trend towards their use as specialized regulatory bodies for service delivery for specific industries

AAs are not government bodies nor an arm of government. They are distinct legal entities (not-for-profit corporations) which are at arm's length from the government. The AA assumes complete control over its own financial, operational and legal responsibilities under its operating statute. This includes day-to-day services such as inspections, setting and collecting fees, licensing, and enforcement.

The AA itself is governed by an independent board of directors, with a majority of members being selected by the board and not by government. The directors are typically drawn from key members of the industry over which the AA has jurisdiction. This gives AAs specialized, industry-specific expertise.

AAs are overseen, but on a hands-off manner, by their respective government Ministries (the Ministry of Government and Consumer Services for the Condo Authority and the CMLA); however, the Ministry remains accountable for the AA's performance. The Ministry can also develop policy recommendations and suggest changes to the AA's governing statute. Although the Ministry may liaise with the AA on issues of its operation and management, the real decision making authority for the AA lies with its board of directors.

Importantly, AAs are also self-financed from fees collected, all on a cost-recovery basis. In other words, except for start-up funding, the government gives no money to AAs and reciprocally, the fees collected to the AAs cannot, and will not, go into the government's general revenue. This, therefore, makes AAs a particularly attractive regulatory system for cash strapped and deficit laden governments.

The government has maintained its position that it expects that the Condo Authority will be primarily financed from a monthly fee per condo unit (roughly about \$1) collected by the corporation as part of their annual operating expenses. There will also be a user fee for those who wish to pursue disputes before the Tribunal and access the condo data registry (in other words, user fees). The CMLA will be financed by the licensing

fees paid by property managers.

The Ministry has just started the process for the creation of the two AAs, by establishing two Advisory Groups that will oversee the establishment of their respective AA. Each Advisory Group consists of representatives from the respective sectors of the industry and non-condo industry people who have experience in creating and running AAs.

Armand Conant was honoured to be asked to sit on the Condo Authority Advisory Group, along with Anne Gottlieb, Genevieve Chornecki, Tom Wright (Chair) and Alison Knight. John Oakes and Dean McCabe are two individuals from the condo management sector that were asked to sit on the CMLA, along with Mary Catherine Lindberg, Mary Lou Gignac, Aubrey LeBlanc and Gail Beggs (Chair).

The Advisory Groups will meet over the next few months to oversee several key steps, which include: (1) the incorporation of a not-for-profit corporation (that becomes the AA), including its founding documents and by-laws; (2) the establishment of business and strategic plans, and (3) creating the governance structure and policies for the AA.

Once created and established, the AAs will be governed first by an interim Board that is selected based on the recommendations and criteria established by the Advisory Group. The interim Board will then oversee the AA until it is fully operational (e.g. establishing procedures, protocols), at which time a permanent Board of Directors will be appointed and take over.

It is the Board of the Condo Authority

that will really get it fully operational; e.g. developing the curriculum for the education of directors, developing the condo guide book, setting up the condominium data registry and access rights and fees, and most importantly, everything related to the Tribunal (guidelines for such things as providing information to the public, dispute resolution, criteria for its Members (adjudicators), rules of procedure and much more).

Although Bill 106 hopefully becomes law by the end of 2016 or early 2017, and the two AAs are created in 2016, most likely they will not be fully operational until later - possibly late 2018 or early 2019 (especially for the Tribunal under the Condo Authority)

The legislative format of Bill 106 and the regulatory structures created under it are reflective of a newer approach to governing that is intended to be more nimble and responsive to the needs of the condominium industry. The Ontario condominium industry has been in a phase of rapid change for several years now, brought on in part by the building boom in Toronto of the last 2 decades. As we develop further, the ability of the government and the AAs to adapt the legislative regulations and the oversight of the condominium industry to changing times will be tested. But, in our view, we are pleased that adaptability and flexibility have been considered from the outset.

As you can see, there is still a tremendous amount of work to do, but real progress has been made and will continue to be made during 2016. So, as they say, "hold onto your seat, it's going to be a wild ride". Stayed tuned and we will keep you advised as things progress. **CV**