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Condominium Authority Tribunal

There's a New Big CAT in Town

The First Significant Change to Note is that Both Condo Owners and Condo Corporations Will Now Be Permitted to Commence CAT Proceedings

"This is my own little town. I'm the mayor, the prosecutor, the cop, and the executioner."
 – JOE "TIGER KING" EXOTIC, 2020



We're six months into the global COVID-19 pandemic. When it all started, everyone was talking about Joe Exotic, the Tiger King and his big cats. Did everyone forget about that already? Or do we just wish we forgot? I like the above quote since it seems relatable to me in many condominium disputes.

On October 1, 2020, The Condominium Authority Tribunal (or "CAT") rolled out its first expansion. There are many opinions circulating, all of which spell out potentially valid concerns about the expanded operations. Is the CAT really the cheaper, faster, and better dispute resolution option for condos, as we often heard when the CAT first opened its doors (if *Tiger King* feels like a lifetime ago, how many lifetimes away was 2017?!?)? Will condo corporations suffer from an inability to recover costs in enforcement matters? Are condos losing out on reasonable options for dispute resolution like mediation/arbitration? Can condos even actually effectively repre-

sent themselves? Keep in mind that if a condo dispute falls under the CAT's jurisdiction, the matter must be heard by the CAT. What started as a house cat is now a feared exotic beast, so to speak. We all knew this change was coming, and there are still plans for further expansion. So what will it mean for the future of condo disputes?

It seems that we won't actually know the answers to these concerns until matters begin to be decided. I'll just be over here looking up theories about what actually happened to Carole Baskin's husband.

Here's what we do know, with a little refresher about how the CAT actually works.

What matters must be referred to the CAT?

Since November 1, 2017, the CAT has only been hearing complaints from owners related to records. The first significant change to note is that both condo

owners and condo corporations will now be permitted to commence CAT proceedings. The new disputes to be heard by the CAT are:

1. Pets and other animals,
2. Vehicles,
3. Parking and storage, and
4. Indemnification or compensation charges (only for charges related to disputes about the items above)

Previously, these types of disputes would have been referred to mediation, arbitration, or the courts. The CAT now has exclusive jurisdiction subject to two exceptions: (i) if Section 117 of the Condominium Act 1998 applies (that's where there is risk of property damage or injury to a person); or (ii) if the dispute relates to the installation of an electric vehicle charging station.

Has the CAT been effective?

Arguably, yes. Considering their limited mandate, they have provided some

ILLUSTRATION BY HENRICK DRESCHER

specific clarity on common disputes, including:

- Is an owner entitled to a full owners list? Yes, but not email addresses
- What is a reasonable hourly labour rate to charge an owner requesting non-core records? \$31

As well, three years of operations have provided the opportunity for us to understand the rules of procedure and how disputes advance through the system.

Take a second to explore the guided steps to common issues the Condominium Authority of Ontario provides on their main website <https://www.condoauthorityontario.ca/issues-and-solutions/>. The resources on this page have been updated to include tips for both owners and condo corporations to resolve disputes on their own. This includes letter templates and step-by-step instructions for escalation.

Below is an example for disputes relating to parking and storage:

One would imagine that in ensuring that the recommended steps have been followed it could be argued that the dispute escalated reasonably. If the guided steps do not provide for a solution, then the CAT comes in. The process is three-stage:

1. Negotiation
2. Mediation
3. Tribunal Decision

As you advance through the stages, each comes with a slightly higher price tag (\$25, \$50, \$125).

How successful are steps 1 and 2? According to the CAO's annual report for 2020, in the previous year 131 cases were filed in the CAT, resulting in 33 Tribunal Decisions. About 75% of all cases filed were resolved without a final Tribunal Decision. It appears to be a very effective tool for dispute resolution. It's also fast – even if you go all the way to a final decision, the process takes less than six months to complete.

Do we need legal representation?

Because this process is so new to condo cor-

porations, it's probably best to err on the side of caution and have your legal counsel navigate uncharted tiger cages. While this may initially be expensive for condo corporations, and the CAT does not award costs unless there is an "exceptional reason", it is prudent at this time as we learn what this change means for the future.

What's next?

We know that the Ministry of Government and Consumer Services recently sought feedback about other types of disputes in condos, and several other common disputes are listed in the issues and solutions section of the CAO website. We can expect that future expansions will include disputes relating to infestation, smoke & vapour, noise & vibrations, odours, and meetings.

I'll leave you with one more relevant Joe Exotic quote "I went to work every day prepared to die in a tiger cage. Dying doesn't scare me." If our friend Joe wasn't scared of his cats, let's look forward with curiosity and an open mind about the CAT expansion. **CV**

<p>STEP ONE</p> <p>Understanding the Issue:</p> <p>Learn more about these types of issues, including examples.</p>	<p>STEP TWO</p> <p>Legal Considerations:</p> <p>Learn more about how the Condo Act and your corporation's governing documents might be relevant.</p>	<p>STEP THREE</p> <p>Solutions:</p> <p>Learn more about what you can do to resolve these issues collaboratively using helpful communications templates.</p>	<p>STEP FOUR</p> <p>Tribunal:</p> <p>Learn how the Condominium Authority Tribunal (CAT) can help resolve disputes.</p>
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