

# Improper Notice of a Lawsuit Under the Condominium Act

19 September 2020

Under the *Condominium Act*, there is a requirement for condominium corporations to advise “all persons whose names appear in the record of the corporation” about a pending lawsuit. This is provided in [section 23](#) of the *Condominium Act*. It makes complete sense for owners to have advance notice before the corporation commences a lawsuit. It should be noted that there are certain exceptions to this notice requirement. For example, if a corporation is enforcing a condominium lien or commencing a small claims proceeding, no notice is required.

Based on the 1983 decision in *York Condominium Corp. No. 46 v. Medhurst, Hogg & Associates Ltd. et al.*, legal actions that have been commenced without proper notice (and challenged) have been deemed a nullity. Given the severity of this remedy, condominium corporations have tended to be very careful to comply with the legislative notice requirements.

In a recent Ontario Court of Appeal decision, the Court has essentially overturned the *Medhurst* decision and confirmed that “finding that non-compliance with s. 23(2) results in a nullity would undermine rather than support the purpose of this legislation.”

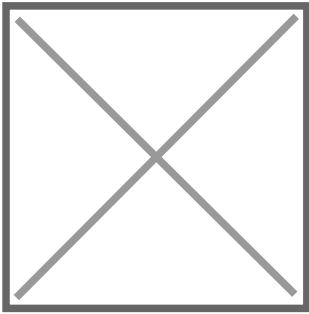
## Key Takeaway

This is a very welcome decision by the court. While condominium Boards and lawyers still need to make best efforts to comply with section 23 of the *Condominium Act*, this case recognizes that mistakes happen and that “nullifying” a lawsuit is a very serious remedy that could hurt the condominium corporation and its owners.

As a related note, all owners and mortgagees should be aware of any legal proceeding (whether commenced by the corporation or brought against the corporation). The new legislative forms require condominium boards to advise owners of new lawsuits. It is very important for condominium boards and property management to be transparent about any piece of litigation (even if section 23 does not apply).

*(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).*

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