

# KEEPING CURRENT

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## Condominium Power Grab: Blurring Personal Choice Line

By Heather Zordel and Jonathan Mesiano-Crookston\*

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes two of Canada's largest banks, several medium to large-sized municipalities, agencies, boards and commissions and other government entities, high tech and software companies, real estate developers, lenders and investors. A number of our lawyers have enjoyed in-house corporate positions and been appointed as board members of tribunals or as judges.

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Condominium living is exploding in Canada. CMHC's fall report for the Greater Toronto Area reported nearly 50,000 pre-construction condo units were sold in the past 2 years, with up to 33,000 multi-family units expected for 2017. Skyrocketing home prices, changing demographics, and greater acceptance of condo living are all driving this change. With this tremendous growth comes questions about why condos were created, their role and how management, the board and owners ought to interact.

A condominium is a specific kind of corporation that manages a property with a number of "strata" units. Individual owners control everything inside the "strata" units, and pay maintenance fees to fund the condo's expenses. The condo, by contrast, maintains and repairs the common property, which is everything outside the "strata" units.

Condos usually don't have anything to do with what goes on inside the individual "strata", except insofar as they enforce rules that affect neighbours. No blasting music at 2 a.m., for example. However, some condos have over the years begun to buy things inside units, which forces unit owners to pay for them. Cable TV, telephone, and Internet services are examples.

When owners have given the condo legal power to buy these services – by adding them to the condo "declaration" that gives the condo its powers – there is no issue. But when the condo is not clearly empowered, these choices are not its to make.

One large condo on the Toronto Harbourfront is currently dealing with this authority issue. The condo had, for 25 years, provided unit owners with

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cable television service, paid for by owners' maintenance fees. Not all owners wanted cable TV. In fact, some didn't want it at all. But that was the way it had been done for 25 years, so that was the way it was.

Recently, this condo entered a new contract to provide all unit owners with high speed Internet and IP TV, which is television delivered over the Internet. The company selected was a newer entrant to the market, and was providing its television using a much newer and less established technology. The package included high-speed Internet, but was also double the price. The channels being provided changed. The services were not made optional: every owner had to pay for them, even if not used.

Further, the condo did this without providing details and without calling a meeting of owners. A large number of owners are not happy. Why?

Fundamentally, because a personal choice was being made by the condo. Some owners didn't want the new services. Some didn't want the hassle, as technicians had to enter their unit to install equipment they didn't want. The installation process of retrofitting an older complex ran into difficulties. People were asked to renovate walls and move built-in furniture. Some didn't want the particular TV channels offered. Some didn't want to change providers because of discounts or features their current provider offered (such as turning the service off when away). Some needed separate invoices for tax reasons, which they would no longer get. Owners on fixed incomes would see

fees unavoidably increase. The cost to owners of this change, including repairing damage, retrofitting walls, running new cable within units, and cancellation of existing services, was not analyzed. All this for discretionary services that the condo did not need to provide owners.

Making matters worse, when the change was finally disclosed, it was said to be a flat fee per unit, but this was not so. Because the condo pays the costs, larger units necessarily pay two or three times more than smaller ones for the exact same service, sometimes making their fees higher than market.

And the contract committed everyone to this new service for five years!

These kinds of "bulk" services increase fees and costs, may not be legal, and remove personal choice in an area of technology that is constantly evolving. The CRTC has made sweeping changes to television and Internet markets to give end users more choice of TV, Internet and phone provider.

At a time when condos are getting older, need their money for repairs, and with utility costs rising, condos simply should not make discretionary spending choices, even if they might think they are entitled to. Service providers are welcome to market their product and battle to win market share, but forcing choice on owners, in their homes, is the wrong way to go. Good governance recognizes individual choice.



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