

The Condominium Tribunal and Recovery of Costs by Condo Corporations – Why A Court Challenge Is Inevitable

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Law Times recently posted an article focusing on the fact that, barring exceptional circumstances, the new Condominium Tribunal won't award costs to successful litigants.

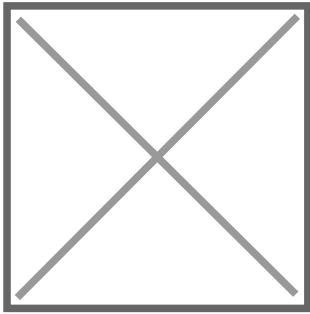
On first blush, this makes total sense. This new procedure has been set up to provide owners and residents with a quicker and cheaper forum to resolve disputes. If an owner makes a request for records, and the tribunal is required to make an Order, the "losing" party won't need to pay the costs of the winning party (as is common in the court process).

The complication, however, is going to be when condominium corporations begin retaining their own lawyers to prepare and attend at the hearings (which is already happening). If a condominium corporation successfully responds to an owner's complaint, and incurs legal costs in doing so, it will want to charge back the costs to the owner under the indemnity provision(s) of its declaration. Most condo declarations contain standard indemnity clauses which require an owner to reimburse the condo corporation for costs incurred by the corporation. If an owner brings an unsuccessful complaint to the Tribunal, then it becomes arguable that the costs incurred by the condo corporation can be charged back to the owner (regardless of whether the Tribunal makes any costs order).

In my mind, it is only a matter of time before these type of charge-backs become common. This, in turn, will lead to the inevitable challenge before the courts, where a declaration's indemnity clause will need to be interpreted in the context of a Condominium Tribunal decision. Again, condo declarations were not drafted with the Condominium Tribunal in mind, and it will be interesting to see how this issue is interpreted by the courts in the future.

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

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