CANADIAN CONDOMINIUM INSTITUTE

Canadian Condominium Legislation
A Coast to Coast Comparison ("Primer")

Foreword to the 2019 Edition

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This is the 5th Edition of CCI National's condominium Primer. As mentioned in earlier editions, given the diversity of condominium legislation and regulation across Canada, CCI National believed that it would be helpful to publish a short overview of some of the more basic aspects of the statutes and regulations from each of the provinces and territories.

As any form of substantive comparison of all the governing legislation and regulation across Canada would be an enormous task, it was decided that the Primer would be brief, very general and not involve any substantive analysis. The goals of the Primer are to provide an educational reference that National Directors may use to familiarize themselves with the legislative frameworks of condominium legislation across Canada. It is a starting point, to give you a flavour of the legislation.

CCI National's Government Relations Committee prepared the first edition of the Primer in 2006, with subsequent editions in 2010, 2013 and 2016. Given the degree of legislative changes that have occurred since 2016 the committee felt that an update was appropriate. We have attempted to try and focus on the more significant points in each jurisdiction's condominium framework. To the extent possible, in each section the jurisdictions that have generally similar laws are discussed as a group, with particular differences noted where applicable.

We have tried our best to understand each statute and accurately state its provisions, but we caution that despite our efforts mistakes or misinterpretations may occur. This Primer is not intended to constitute legal advice, and is not intended to be relied upon as legal advice or as a substitute for obtaining such advice. CCI disclaims any responsibility for the Primer's accuracy or completeness, or for any harm arising from reliance on this Primer.

We would like to thank Armand Conant of the law firm Shibley Righton LLP, who headed up this project, and Daniel Conant, who assisted with the research and drafting of this edition of the Primer. We also thank all those across Canada who took time out of their busy schedules to review drafts of this Primer, including, Jamie Bleay, Brynne Thorderson, Barbra Hart, Donna Singbeil, Geoffrey Penney, Dionne Levesque, Leo-Guy LeBlanc, Jessica Weick, Patricia Elia and Nancy Houle. The legislation and regulations referred to in this edition are current as of October 1, 2019.

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1. Introduction

Condominium legislation across Canada shares many common features. All Canadian provinces and territories have enacted legislation setting out the rights and obligations of condominium owners and residents, developers, and condominium corporations, as well as the rights of prospective condominium purchasers. All condominium laws are based on a similar framework: condominiums as shared ownership of real estate, typically consisting of individual units and common elements, with owners having exclusive ownership of their individual units, a percentage of shared ownership of the common elements, and a right of access to and use of the common elements. Further, all Canadian condominium laws are based on the premise that the establishment of a condominium creates a new legal entity, the condominium/strata corporation, which governs the condominium's affairs.

In the following sections, we explain and compare some of the key concepts in condominium legislation across Canada. Subsequent to the third edition, Manitoba enacted new legislation and Saskatchewan amended their legislation. Alberta has given its new legislation Royal Assent, but it has not yet been proclaimed pending development of the regulations. Included in Alberta's changes are new provisions on licensing of condominium property managers.

In December of 2015, Ontario gave Royal Assent to Bill 106 (*Protecting Condominium Owners Act, 2015*) that significantly reforms its existing condominium legislation, including the governance of condominium property, creating a new tribunal for dispute resolution (with a significant online capability); along with introducing new legislation for the licensing and regulation of condominium property managers. Only a portion of these reforms have been proclaimed into law effective November 1, 2017. British Columbia has established an online dispute resolution tribunal which deals with condominium, and residential landlord/tenant disputes. also embarked (in part) on reviewing and reforming its legislation and also establishing a significant online dispute resolution capability.

This 5th edition of the Primer will refer to the new legislation in Manitoba, the amended legislation in Saskatchewan, the proposed legislation in Alberta (as it is close to proclamation) and only the proclaimed portions of Ontario reforms. We will not refer to the proposed legislation from Ontario as it is not close enough to proclamation. Thus we will use its current legislation.

2. Creation of the Condominium

(a) Name of Legal Entity

All provinces and territories, except Quebec and British Columbia, use the term "condominium corporation," or simply "corporation," for the legal entity that is the condominium.

British Columbia refers to a condominium corporation as a "strata corporation". In Quebec, the condominium corporation is referred to as a "syndicate," or "syndicate of co-owners." Nonetheless, the syndicate, like condominium corporations elsewhere in Canada, is considered a distinct legal entity.

Notwithstanding these minor differences in legal terminology for the legal entity, in both British Columbia and Quebec the term "condominium" is commonly used to refer to the corresponding building or real estate.

(b) Declaration and Description

As a general matter, in all Canadian jurisdictions a condominium corporation is created by the registration with the land registry office of the corporation's constituting document, usually called the "declaration," and the condominium's legal description or plan. The person filing the declaration, typically the condominium developer is often referred to as the declarant (or in Quebec, the promoter).

The declaration and description are often in a prescribed form set out by regulation. Many jurisdictions also permit or require the declaration to contain the by-laws, any provisions regarding the use of the units or common elements, the responsibilities of the corporation and of unit owners, or other similar matters.

A description or plan contains survey plans describing the boundaries, units and common elements of the corporation. Some jurisdictions also require a certificate from an architect and/or engineer stating that the buildings have been constructed according to regulations.

Alberta, British Columbia, and Saskatchewan treat the declaration and description as a single document, referred to as the condominium "plan". The term "declaration" is not used in reference to the condominium plan.

(c) Common Elements

The existence of common elements is a basic characteristic of any condominium corporation. In most Canadian jurisdictions, the term "common elements" (in Quebec, "common portions", in Saskatchewan and Alberta, "common property") refers to all the property of the condominium that is not the individual units; that is, those sections that are for the common use of all unit owners, or that are not assets owned by the corporation itself (for example, a superintendent's suite). The interest of the unit owners in the common elements and assets is the percentage amount set out in the condominium corporation's declaration (or condominium plan in those provinces that do not refer to a declaration).

(d) Unit

In most jurisdictions, the areas within the condominium building or property individually owned by each condominium owner (and registered on title by way of a transfer or deed) are referred to as "units". The boundaries of each unit will be legally defined in the condominium's declaration and description or plan. Some jurisdictions specify that the unit includes, in addition to the space enclosed by the unit's boundaries, all of the land, structures and fixtures within this space, as set out in the declaration and description.

British Columbia refers to a unit as a "strata lot". In Quebec, a unit is referred to as a "private portion".

(e) By-laws

All jurisdictions provide for by-laws of the condominium corporation, which must be consistent with the legislation and with the condominium's declaration or plan. The by-laws govern such matters as the control, management, administration, use and enjoyment of the units and of the common elements, and the regulation and governance of the corporation and the board of directors.

Canadian condominium legislation sets out those matters that can be properly dealt with in the by-laws. For example, in Ontario, a by-law may be held invalid if it does not fall within the limits of such subject matter, such as where it deals with a matter which under the legislation must be passed by way of a rule instead. In New Brunswick rules can only apply to common elements and cannot deal with anything within the unit or ownership of the unit.

Ordinarily the declarant will prepare the corporation's initial set of by-laws, which will include the corporation's general (omnibus) by-law, as well as a borrowing by-law. Some provinces, such as Saskatchewan and Alberta, have default provincial bylaws in the regulations that are in place then the corporation is created. The developer would normally file bylaws for the specific corporation, but if not the condo is governed by those bylaws until amended by the owners.

Each jurisdiction sets out a procedure for the proper enactment or modification of a by-law; typically, it must be passed by the condominium's board of directors, approved (with or without amendment) by the owners (sometimes requiring a positive vote of more than 50% of all voting unit owners), and then registered on title. Saskatchewan requires a positive vote of 2/3 of all unit owners and their by-laws are not registered on title but rather are filed at the Corporate Registry.

The percentage of owners who must vote in favour varies, although most Canadian jurisdictions require the approval of owners holding at least two-thirds of the voting rights Ontario requires 50% for what is sometimes called the bigger or more substantive by-laws and for certain new types of by-laws created under the proclaimed reforms (effective November 1, 2017) the percentage is a majority of those owners attending and voting (either in person or by proxy). Quebec requires only 50%, Nova Scotia requires 60% and British Columbia requires 75%. In New Brunswick a corporation may make, amend or repeal by-laws by a vote of the owners of at least 60% of the common elements, or a greater percentage if specified in the declaration. Alberta requires a double 75, where not less than 75% of all owners entitled to vote participate and are representing not less than 75% of the total unit factors for all the units. Manitoba requires approval by a vote of unit owners who hold 75% of the voting rights, however, it is only 75% of the voting rights voted by those unit owners in attendance (in person or by proxy) at the meeting to consider the by-law rather than of all of those holding voting rights. In Saskatchewan, bylaw amendments require approval from at least two-thirds of owners holding voting writes whether they are present at the meeting or in writing or a combination of both.

Saskatchewan's legislation contains a provision unique in Canadian condominium legislation whereby a corporation may, by by-law, establish "sectors" within the corporation (for example, commercial and residential sectors, within a building to differentiate different units or by building where the condominium contains multiple buildings). Through the sector by-law, the corporation may delegate authority to the unit owners of each sector, including the ability to administer the property, establish a separate sector board, and make separate by-laws for the sector. Saskatchewan's legislation is modelled on the BC legislation, with the exception in BC they are

referred to as sections. New Brunswick's legislation contains a very similar provision whereby if a condo corporation is for mixed use and a declaration divides the units into classes, then the corporation may make more than one set of by-laws and limit the application of each set of by-laws to one or more of the classes. The corporation may have only one board of directors.

3. Rights and Obligations of the Corporation

(a) Governance of the Corporation – The Board of Directors

All Canadian jurisdictions provide that the condominium corporation, as a separate legal entity, shall be managed by a board of directors (in British Columbia, the board of directors is referred to as a "council", and the directors as "council members"). The board is responsible for exercising the powers and performing the duties of the corporation, though it can, and typically does, delegate the day-to-day management of the corporation to professional managers (as discussed further at section 3(h), below). Nonetheless, the necessary corollary of the board's responsibility is its potential legal liability when it fails to carry out its duties.

The composition of the board, the mechanisms for selecting and replacing the members, the qualifications for membership, the term of office of directors, and other similar matters are typically set out in the legislation, though most jurisdictions also allow additional criteria to be imposed through the corporation's by-laws (for example, whether a director must be an owner, or a resident owner). Alberta has statutory conditions which would prompt the removal of a director or vacancy of an office. In Ontario, directors and candidates for the board must comply with certain mandatory disclosure requirements. Directors must also complete online director training within six months of their appointment, election or re-election.

In many jurisdictions the corporation's initial board is appointed by the declarant. The condominium legislation in Saskatchewan, Ontario, Quebec, Manitoba, Alberta, and Nova Scotia provides that once sufficient units have been sold, such that the declarant ceases to own a majority of the units, the owners must elect a new board. Other jurisdictions, with exceptions in New Brunswick, simply provide for a new board to be elected at an annual general meeting.

In New Brunswick, if the declarant owns at least one unit he or she can appoint a number of directors proportional to the number of units that he or she owns in the condominium property, and the other owners elect the remaining directors. The declarant cannot appoint directors to the board if, at the owners' meeting at which the board is elected, the owners of at least 60% of the common elements vote to pass a resolution that the entire board be elected by the owners.

Ontario's legislation imposes an unusual additional requirement, whereby if at least 15% of the units of the corporation are owner-occupied, then one position of the board is reserved for voting only by owners of owner-occupied units. Therefore, that particular position of the board can only be voted on (for election or removal) by such owners. This provision has unfortunately caused many headaches for condominium corporations with respect to proxies and voting procedure. Once upcoming amendments to the provincial legislation come into force, it will no longer be a mandatory position and will be replaced with a "non-leased voting unit" position (and only required if requested by an owner of a non-leased voting unit).

(b) Standard of Conduct of Directors

Legislation in most provinces sets out a standard applied to a condominium corporation's directors in exercising the powers and discharging the duties of office. In many cases, this statutory standard approaches or matches the standard imposed on directors of ordinary corporations.

The Yukon, Manitoba and Nunavut, provide that a director must act in good faith. Ontario, Alberta, New Brunswick, Nova Scotia, Manitoba and Newfoundland and Labrador add further that directors must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. British Columbia, and Manitoba specify that council members must act in the best interests of the corporation. Finally, legislation in Quebec applies to condominium directors the same standard as that of the director of any corporation or other legal person; a director must act with prudence and diligence, honesty and loyalty in the best interest of the corporation. The Alberta legislation also states that the board must act in the best interests of the Corporation.

(c) Rules

Most jurisdictions expressly provide that the board may make rules to govern the corporation's common elements and assets, or permit the board to do so if provided for in the by-laws. The rules of the corporation are separate and distinct from the by-laws; generally they are easier to enact or amend as compared to the by-laws. The legislation provides for the way in which rules are validly enacted and in some cases, what they are allowed to deal with. It is important that the rules not relate to matters that are the proper subject matter of a by-law, or that can only be dealt with in the declaration. A purported rule that governs an area outside the scope permitted under the legislation is vulnerable to being struck down if challenged.

Most Canadian jurisdictions that provide for condominium rules state that the board may make rules, where the condominium's by-laws so provide, respecting the use of the common elements and assets for the purpose of preventing unreasonable interference with the use and enjoyment of the units and the common elements. Manitoba and New Brunswick's legislation permits such rules regardless of the by-laws. Newfoundland and Labrador additionally requires that such rules be approved by owners holding at least two-thirds of the voting rights, the same as that required to approve a by-law.

British Columbia, Alberta, Nova Scotia, New Brunswick and the Northwest Territories allow the council/board to make rules outlining the use, governance, maintenance, safety and condition of the common property and common assets. Most jurisdictions stipulate that the rules must not contradict the bylaws and declaration. In British Columbia alone, the majority of the owners must confirm the rule at the next annual general meeting for the rule to remain in effect. Saskatchewan does not permit the board to make rules.

In Ontario and Manitoba the board's rule-making power is set out in slightly broader terms. The board may make rules respecting the use of common elements and units to promote the safety, security or welfare of the owners and of the property and assets of the corporation or to prevent unreasonable interference with the use and enjoyment of the common elements, the units or assets of the corporation. Further, in Manitoba, the board may make rules to maintain the aesthetic appeal

of the property or promote the fair distribution of services and amenities and the use of facilities. A rule takes effect 30 days after notice is given to the owners, unless within that period a requisition is made for an owners' meeting. If a valid requisition is received then a meeting must be called, at which a majority of the owners at the meeting (in person or by proxy) must approve the rule for it to take effect. In Manitoba, after a rule takes effect, the unit owners can vote to amend or repeal it at a general meeting of unit owners. In Manitoba, rules must also be reasonable, in that they must be reasonably related to the purpose for which they are intended, they must apply to all unit owners, tenants and other occupants in a fair manner, and they must be clearly expressed so as to inform a person of what he or she must or must not do to comply.

Legislation in Quebec and Saskatchewan do not provide for rules as distinct from by-laws.

(d) Enforcement

As noted above, Canadian condominium law requires the corporation to manage its property and common elements. In doing so, it must ensure that the condominium unit owners and residents comply with the applicable legislation, and their declaration, by-laws and rules.

The particular enforcement powers granted to corporations vary, depending on the jurisdiction and the contravention. Among the measures provided for in legislation (but not the same in all provinces) are imposing fines, denying use of common elements, liens for arrears of payment of common expenses or common element fees, garnishing of a tenant's rent, mediation and arbitration, and going to court to seek compliance. Common expenses liens and mediation/arbitration are discussed in more detail below at sections 3(g) and 5(a), respectively.

Alberta, Manitoba and the Northwest Territories permit the corporation to impose monetary or other sanctions on owners, tenants and invitees who fail to comply with the condominium's by-laws or for Manitoba, rules. The specific sanctions must be set out in the by-laws, and must be reasonable in the circumstances. Where the person fails to comply, the corporation may enforce the sanctions by court order. In the case of Manitoba, these sanctions are subject to the maximum amount and frequencies and failure of the person to comply allows the corporation to exercise lien rights in the same manner as if the fine were an unpaid assessment of common expenses.

In British Columbia, in order to enforce a by-law or rule the corporation may impose a fine, remedy the contravention, or deny access to a recreation facility. However, the corporation may not take these measures, unless it has received a complaint, provided the person who is accused of the breach with details of the complaint and an opportunity to answer, and provided notice of its decision. Recent amendments to British Columbia's regulations permits a fine of up to $1,000 for each contravention of a bylaw that prohibits or limits use of a residential strata lot for remuneration as vacation, travel or temporary accommodation.

In New Brunswick, the legislation is silent as to whether or not a corporation can pass a by-law allowing for fines,

Legislation in Ontario, as well as that in Newfoundland and Labrador, New Brunswick, Nova Scotia, P.E.I., Manitoba, and the three territories state that the corporation has the duty to effect

compliance by owners with the legislation, declaration, by-laws and rules. Newfoundland, New Brunswick and Nova Scotia add a general provision that the corporation has all powers necessary to carry out its duties. All nine jurisdictions specifically permit the corporation to seek a court order directing compliance.

However, as further explained in section 5(a) (below), in Ontario, where there is a disagreement with respect to the declaration, by-laws or rules, the corporation must in certain cases proceed by way of mediation and arbitration rather than the courts. In Nova Scotia, either party to the dispute may request mandatory arbitration instead of going to court, while in Manitoba, as well as under the new Newfoundland legislation, arbitration or mediation requires both parties to agree. In Ontario, a court may also order the sale of an owner's unit, though such orders are relatively rare and issued only where lesser sanctions are insufficient.

Quebec law states that the condominium's declaration, which includes the by-laws, binds owners and their successors. The only express enforcement measure is a provision permitting the syndicate to apply to a court for an injunction enforcing compliance where an owner has refused to comply with the declaration, causing serious and irreparable prejudice to the syndicate or to another owner. In addition, if the co-owner breaches the injunction, the court may, in addition to any other penalties, order the sale of the owner's unit. However, the declaration may allow the syndicate to impose penalties for non-compliance in addition to those above.

Saskatchewan legislation specifies that the corporation has the responsibility to effect compliance by owners with the by-laws. The corporation may take proceedings against a non-compliant owner in small claims court, with a maximum penalty of $500 for a given contravention. Alternatively, where both parties agree, they may submit their dispute to arbitration. In addition, owners can take the corporation to court for failing to fulfill its duties, and they can take anyone to court if they are facing oppressive behaviour or prejudice.

In addition, in Ontario and Manitoba, as well as under the new Newfoundland and Labrador legislation, condominium corporations are expressly required to effect compliance by tenants or occupiers. In Manitoba, condominium corporations have the duty to take all reasonable steps to ensure that its commercial lessees, employees and agents comply with legislation and the declaration and by-laws and have the right to require unit owners and other occupants to comply. Ontario also permits a court to terminate a residential tenancy in a condominium where the tenant fails to comply with a previous court order for compliance, or where the tenant fails to cover any arrears (up to the amount of the rent) in the owner's monthly common element fees, where given notice to do so by the corporation.

In B.C., the corporation may take the same measures against a tenant as against the owner, though the corporation must give notice. If the person is a tenant, the corporation must also give notice of the complaint and the decision to the owner of the unit. Where the contravention is repeated and seriously interferes with other residents, the corporation may also evict the tenant. In Saskatchewan, a tenant is required to comply with the by-laws as a condition of tenancy, notwithstanding anything in the lease and the corporation may bring a claim in small claims court against a non-compliant tenant, with respect to owners. Further if the bylaw so provide the Corporation can apply to Office of the Residential Tenancies for an order to have the tenant evicted

from the unit. In Manitoba, where a residential tenant fails to remedy the breach, after having been given notice to do so, the corporation may terminate the residential tenancy.

Quebec provides that the condominium's by-laws bind a tenant or occupant of a unit upon the tenant or occupant receiving a copy of them. Where a tenant's non-compliance causes serious prejudice to another owner or occupant, the syndicate may terminate the lease of the unit after giving notice to the tenant and the owner.

It should be noted that in some circumstances, condominium legislation may effectively take priority in some areas over residential landlord/tenant legislation. For example, under Ontario's landlord-tenant legislation, a "no pets" provision in a residential lease is deemed to be void. However, under its condominium legislation, a pet prohibition contained in the declaration could be enforced against the tenant, and would override the provincial landlord-tenant legislation.

(e) Repair and Maintenance

Most jurisdictions have broadly similar provisions concerning obligations of repair and maintenance.

All jurisdictions provide that the corporation shall repair and maintain the common elements. British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, P.E.I., and the three territories expressly permit the declaration or by-laws to shift the repair or maintenance responsibility for some or all of the common elements to the unit owners.

Manitoba, Ontario, New Brunswick, Nova Scotia, P.E.I., and the territories provide that the corporation shall repair units after damage or failure, except where the declaration, or in some jurisdictions, a by-law, provides otherwise. Once the upcoming amendments to the Ontario legislation come into force this will change in Ontario, with owners having the obligation to repair their units unless the declaration says otherwise. The legislation in Newfoundland and Labrador provides that the corporation shall make such repairs in all cases. In Saskatchewan, only the responsibility to maintain exclusive common property can be shifted to the owner who has exclusive use of that area of common property, however, the bylaws can make the condominium corporation responsible to maintain all or a portion of a unit and allow for the cost of that maintenance to be included in the reserve fund study and collect the fees for this maintenance.

Notably, however, the corporation's duty to repair after damage in these jurisdictions excludes improvements to the unit. British Columbia permits the corporation, by means of by-law, to assume responsibility for repairs to a strata lot. Quebec precludes an owner from interfering with the syndicate making urgent repairs or work necessary to conserve the building, even where such work is inside the owner's private portion. In Manitoba, a declaration may vary a condominium corporation's duty to repair after damage to require the corporation to repair after damage improvements to a unit.

British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador (in its new legislation), P.E.I., and the territories expressly state that the owners shall maintain their units. Most of these same jurisdictions also state that where an owner fails to reasonably carry out the obligation to repair or maintain, the corporation may do the work at the

owner's expense. Saskatchewan provides that a corporation may bring an action in debt to recover any sums expended for repairs to an owner's unit.

In addition, legislation or regulations in all regions, save P.E.I., Nunavut and the Yukon, allow for the designation of use of specified common elements to a specified owner or owners (sometimes referred to as "exclusive use" or "restricted use" common elements or areas, or "limited common property"). As an example, Manitoba and Ontario's legislation permits the corporation, in its declaration, to impose repair and maintenance obligations on an owner in respect of their exclusive use common elements. British Columbia permits the corporation to impose these same obligations on an owner by means of a by-law. Alberta, similarly, permits the corporation to delegate its responsibility for exclusive use common elements.

(f) Reserve Fund

Most jurisdictions require the corporation to maintain a reserve or contingency fund, generally for major repairs and replacement of the common elements and assets of the corporation. The fund cannot be used for general operating expenses. The corporation collects contributions to the reserve fund from the owners, as part of their contributions to the common expenses. This fund is strictly controlled, and often thought of as a sort of "sacred trust".

Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador and the Northwest Territories provide for certain reporting or oversight requirements in respect of the fund, sometimes called "reserve fund studies," to ensure it is adequately funded. In the amended legislation of British Columbia, a 'Depreciation Report,' serving a similar function to a reserve fund study, must be compiled every three years and is to include an estimate of all major repair and replacement costs in addition to expected lifetime of items of the strata corporation.

Legislation in Ontario, Manitoba, Saskatchewan, Alberta, New Brunswick and the North West Territories mandate the frequency of conducting reserve fund studies, and Ontario, Alberta, New Brunswick and the Northwest Territories, require the corporation to ensure the fund is adequately funded. In New Brunswick, the amount in the reserve fund must match the minimum funding recommendations of the reserve fund study and if not, then the corporation must assess and collect the amount from the owners. Manitoba and Saskatchewan do not require the fund to be adequately funded, however, the board has to take the reserve fund study into account, but they can opt to not abide by its recommendations. In addition, the board in Ontario and Manitoba must notify all owners of its funding plan. In New Brunswick, the corporation must submit its reserve fund to the government within 30 days of its completion or any update.

Only P.E.I., Yukon, and Nunavut seem not to have any provision in their legislation for a reserve fund.

(g) Common Expenses Lien

Unit owners' contributions to the corporation's common expenses (often called "common element fees" or "condominium fees") are usually the sole source of revenue for the corporation. Owners may not always be aware that because of a ruling by the Canada Revenue Agency (CRA), and not because of the enabling legislation under which a corporation is created, condominium corporations are not-for-profit entities (which status could be revoked by the CRA on a case-by-

case basis depending on the revenue and profit status of the corporation), and rely on the regular payment of the common element fees to function. Timely collection of these fees is thus critical.

Given the importance of collecting the monthly fees, in addition to their more general enforcement powers, corporations in all jurisdictions have the ability to register a lien or similar charge against an owner's unit where the owner defaults on the obligation to pay the monthly fees (or, in some jurisdictions, other expenses as well). The unpaid amount constitutes a lien on the interest of the owner, and may be registered by the corporation as an encumbrance over the unit of the owner. Most jurisdictions provide the corporation with the supplemental right to claim for certain costs associated with the collection of arrears. One exception, P.E.I. does not explicitly provide the right to claim for costs associated with the collection of arrears.

Provided that statutory notice requirements are complied with, registered liens for common expenses will rank in priority over most other registered or unregistered interest, including mortgages. Relatively few other liens, such as liens in favour of the Crown or certain municipal liens, will take precedence over common expenses liens.

Some provinces impose strict procedural steps in order to protect or perfect the lien or charge rights. For example, in Ontario and New Brunswick, a corporation must send out a Notice of Lien to the owner at least 10 days before the lien can be registered. In British Columbia, such notice must be given to the owner at least 14 days prior to the registration of the lien. In Manitoba, the condominium corporation must give the unit owner written notice of the lien at least 7 days before a lien is registered. In Quebec, one of the legal types of hypothecs is akin to a lien against an owner's unit for unpaid common expenses has effect only upon registration of a notice indicating the nature of the claim, its current amount, and the expected changes for the current and succeeding two financial years.

The new legislation of Manitoba as well as legislation in Ontario, P.E.I., and New Brunswick provides that the lien right expires three months after the default that gave rise to the lien, unless a certificate of lien is registered against title to the unit in question within that time frame. While the corporation may still go after the owner for the arrears, it will have lost the right to register a lien on title for those arrears that are more than three months old. In this case, those amounts will also lose priority along with the entitlement to additional amounts (for example, reasonable expenses of collection including legal fees) that are otherwise included in the lien.

All jurisdictions except British Columbia expressly provide that the corporation has the right to enforce the lien or charge in the same manner as a mortgage. The B.C. legislation, though not specifying that the lien may be enforced in the same manner as a mortgage, operates quite similarly - it permits the corporation to apply to the court for a sale of the strata lot, and the court may, in its discretion, order such a sale on price and terms to be approved by the court, or may enter judgment against the owner for the amount of the lien.

In the Yukon, Northwest Territories, Alberta, Saskatchewan, Manitoba, New Brunswick and Ontario the corporation that registers such interest or lien shall discharge it on payment of the amount of the lien, while in British Columbia the lien must be removed within one week of receiving the amount owed.

(h) Management

All jurisdictions provide that the by-laws of a corporation shall regulate the corporation, and shall provide for the control, management and administration of the corporation and its units. The corporation (through its Board of Directors) is responsible for operation and management of the corporation, including the enforcement of the legislation and its declaration, by-laws and rules. However, the Board is permitted to delegate some of these responsibilities to managers, whether in-house (i.e. employees of the corporation), or by contracting with third party management companies. Saskatchewan and Alberta refer to this as a "management agreement," while British Columbia refers to it as a "strata management contract".

In Alberta, Saskatchewan, and the Northwest Territories, a management agreement entered into by a board elected while the majority of the units were owned by a developer (otherwise known as a developer's or a declarant's management agreement) may not be terminated without cause until the term of the agreement has reached one year, unless otherwise permitted by the agreement. In contrast, the new legislation of Manitoba provides that despite any term to the contrary, the management agreement may be terminated on 30 days' prior written notice at any point during the 12 months after the turnover meeting if the contract was entered into prior to the date of the meeting. In Newfoundland, Alberta, Ontario, Saskatchewan, P.E.I., and the Northwest Territories, termination of such a contract by either party requires 60 days' written notice. Furthermore, most legislation permits the developer's management agreement to be terminated at any time after the developer ceases to own more than 50% of the common elements. Nova Scotia provides for a maximum time frame of two years by which the corporation can be bound by a single management agreement.

British Columbia legislation requires licensing of professional strata managers. Ontario enacted the *Condominium Management Services Act* under which condominium property managers, or anyone receiving income while conducting statutorily defined management services, must be licensed. The licensing provisions provide enhanced competency, transparency, education and accountability for managers. To look after the licensing, education, and discipline of licensed managers, Ontario created an Administrative Authority called the "Condominium Management Regulatory Authority of Ontario".

(i) Auditing

Most jurisdictions impose strict financial record keeping and audit obligations on the corporation. However, not all jurisdictions dictate that the financial statements of the corporation must be audited.

In both Ontario and Manitoba, there are extensive provisions dealing with this. At each annual meeting, the owners must appoint an auditor of the corporation to hold office until the close of the next meeting. Where an auditor is not appointed at an annual meeting, the auditor in office continues their term until a successor is appointed. The auditor must be sufficiently independent of the corporation and, in Ontario, must be licensed as a public accountant under the *Public Accountancy Act*.

The auditor prepares and submits audited financial statements to the owners at each annual general meeting. The audited financial statements must be prepared in the form prescribed by the regulations, made in accordance with generally accepted accounting principles, and must be approved by the board prior to being presented at each annual general meeting. It should be noted that auditors report to the owners, not to the corporation or its board.

In Ontario, a corporation that consists of fewer than 25 units and has held its "turnover" meeting (where control of the corporation is turned over from the developer to the unit owners), may, at an annual general meeting, waive its requirement for an auditor for that year provided that 100% of the unit owners as of the date of the meeting have consented in writing to do so.

Manitoba, Newfoundland and Labrador have substantially the same provisions, however, the right to waive the requirement to appoint an auditor is only available to corporations that consist of fewer than 10 units. In New Brunswick the threshold is fewer than 11 units. Furthermore, New Brunswick does not make formal reference to an "auditor," but instead requires a Review Engagement prepared by, amongst others, a CPA.

Nova Scotia contains similar provisions to the other jurisdictions, especially Ontario, as it specifically requires the appointed person to be licensed as a public accountant under the *Public Accountants Act*. The appointed person is to have access to all records, documents, accounts and vouchers of the corporation and make reports on the comparative financial statement of retained earnings, income statements and statements of changes in the financial position to be laid before the corporation at each annual meeting.

In Alberta the audit requirements are not as extensive as they are in Ontario, Newfoundland and Labrador, and Nova Scotia and do not require any formal "audit" unless the by-laws require it. Regardless, the board of directors remains subject to certain general audit requirements. The board of directors is responsible for preparation of financial statements (in accordance with GAAP) relating to all money of the corporation, the income and expenditures of the corporation, and other material financial documents that the board may determine or as may be directed by a resolution at an annual general meeting.

In Saskatchewan, the newly amended act has introduced strict auditing requirements. If a condominium corporation consists of more than 50 units an audit must be completed. If, however, the corporation consists of between 12 and 50 units, and if 80% of all owners vote in agreement, the audit can be waived with only a financial review being required. If 100% of the owners vote in agreement then both the audit and the financial review can be waived. This vote must be conducted on an annual basis. Corporations with fewer than 12 units are automatically exempted from the audit requirement and may dispense with a review with the consent of 80% of owners. Like Ontario, Saskatchewan requires auditors to be independent and qualified under The Accounting Profession Act.

In P.E.I., while the board's audit obligations are not explicitly mentioned, the provincial legislation refers to an "inspector" who may be appointed to investigate the affairs of any person in receipt of money paid by or on behalf of an owner for the payment of common expenses and to make an audit of the accounts and records. The inspector, once appointed, has all the power of a commissioner under the *Public Inquiries Act*.

In Quebec, the syndicate must enclose, along with the documents required to call an annual meeting, a balance sheet, the income statement for the preceding financial period, and statements of debts and claims. Generally, the financial statements need not be audited, though such an audit must take place if demanded by co-owners representing 40% of the voting rights.

(j) Insurance[1]

A comparison of the insurance provisions in Canadian condominium legislation presents particular difficulties.

While the insurance industry across the country operates under one arrangement, set out in the Agreement of Guiding Principles of the Insurance Bureau of Canada, and while there is general consensus across the country on how the insurance scheme is to operate, there is a surprising diversity in the language used among the thirteen legislative provisions and the Agreement of Guiding Principles. In some instances the variation in the language used is very subtle, with the result that great care should be used in determining the precise legal implications of the legislation in each jurisdiction.[2]

The basic insurance scheme provided for by the insurance industry's Agreement of Guiding Principles calls for the condominium corporation to carry damage insurance coverage on both the common elements and the units. However, it is important to note that the insurance scheme does not include coverage for improvements added to the units by unit owners.

This scheme is applied in the legislation of P.E.I., Newfoundland and Labrador, Ontario, Quebec, Manitoba, Saskatchewan, Alberta and British Columbia. Where the *Agreement of Guiding Principles* and these statutes diverge most markedly is in defining the exempted improvements. The British Columbia statute, for instance, refers to the corporation's obligation to insure "fixtures" installed by the developer as part of the original construction. In Manitoba, Saskatchewan and Nova Scotia, the description of a standard unit including all fixtures and fittings must be included in the declaration. Saskatchewan's newly amended legislation will require a standard unit bylaw for new developments and grandfathered for existing condos when they amend their bylaws. Alberta's new legislation will also require the adoption of a standard unit bylaw where the corporation does not require coverage of unit improvements in it's bylaws. Other statutes refer either to improvements added by a unit owner or to improvements added after registration of the condominium corporation.

The Ontario legislation has attempted to avoid this difficulty of defining improvements by requiring the passage and registration of a standard unit by-law to establish the level of unit finishing covered by the corporation's policy (and does not necessarily mean the unit as originally constructed). Once further amendments to the provincial legislation come into force in Ontario,

[1] This subsection originally contributed by Barry R. Scott, of Scott Petrie Brander Wright & Bell LLP, London, Ontario, and updated through contributions from CCI members from across Canada. In addition, in 2019, CCI National's GR Committee prepared a chart comparing the insurance regimes in each province, through contributions from CCI members from across Canada.

[2] I highly recommend reviewing the material from the CCI symposium "*Insuring Condominiums – Current Issues*" (May 25, 2005), which deals with most of the critical insurance issues in much greater depth than can be done in this Primer. A good starting point is Chapter 4, by Rob Giesbrecht, which discusses the general legal framework.

the regulations will provide a standard unit definition (which can still be overridden by passing a by-law).

A second approach is used in the legislation of Nova Scotia, New Brunswick, and all three territories, which each provide that the corporation is to insure its liability for repairing the common elements and the units. This obligation to insure, which may not be as comprehensive, may be further varied by the provisions of particular declarations or by-laws. For example, in New Brunswick, the minimum coverage is for fire damage, however additional risks may be specified in the corporation's declaration or by-laws. Additionally, in New Brunswick, the corporation shall submit proof of its insurance to the government each year. A number of jurisdictions provide that an owner may, in effect, duplicate the corporation's coverage on the owner's unit for the purpose of satisfying the requirements of a mortgagee. Most of those statutes also provide that this insurance is not to be brought into contribution with any other insurance. It is difficult to see why these provisions are necessary, as the corporation's insurance should adequately protect all mortgagees.

Some jurisdictions, such as Ontario, Manitoba, and British Columbia, have further provisions regarding responsibility for the deductible amounts on the corporation's insurance policy.

Most jurisdictions provide that the damage insurance is to be for full replacement cost and some specify the range of risks to be covered or provide that the risks to be covered may be specified in declarations or by-laws.

The legislation in each of Ontario, Manitoba, Saskatchewan, British Columbia, Alberta and all three territories contains specific provisions with respect to bare land or vacant lot units. In Ontario, the corporation does not carry insurance on vacant land units; in British Columbia, the corporation insures bare land units, but not improvements made by an owner. In the other five jurisdictions, the corporation may be required to insure bare land units by the provisions of specific declarations. In Saskatchewan, for example, the corporation is required to insure both the standard unit and the common elements if they are connected to bare land. If they are not connected then they do not need to insure the standard unit.

Most provinces either require the carrying of Directors and Officers negligence insurance, or require it if reasonably available. Although not mandatory, many provinces encourage corporations to carry directors' and officers' fidelity insurance for their dishonest acts. Under Alberta's new legislation, fidelity bonds may be mandatory.

(k) Status Certificate

Most jurisdictions require the corporation to provide information statements about various matters relating to the specific unit and the corporation as a whole, including potential or actual liabilities of the unit and the corporation. This statement is referred to variably as a "status certificate", "information certificate", or "estoppel certificate", depending on the jurisdiction. What is most important is that the certificate binds the corporation as of the date it was given or deemed to have been given, with respect to the information that it contains or is deemed to contain, as against a purchaser or mortgagee of a unit who relies on it.

In Ontario and Saskatchewan, the form of the status certificate is prescribed by the regulations. It must contain such information as, for example: (i) whether the unit in question is in arrears; (ii) any knowledge of a coming increase, or reason for a future increase, in the common element fees or a special assessment; (iii) disclosure concerning the reserve fund; (iv) whether there are any lawsuits outstanding against the corporation, and in Ontario as of mid 2018 - electric vehicle charging; as well as many other matters. If the status certificate omits any required material information, it is deemed to include a statement that there is no such information.

An Ontario corporation must provide the status certificate within 10 days after receiving a request for it and payment of the prescribed fee (presently $100). A corporation that does not give a status certificate within the required time shall be deemed to have given a clear certificate, on the day immediately after the 10 day period expired. If the certificate omits material information that it is required to contain, then it is deemed to include a statement that there is no such information.

Legislation in the Northwest Territories provides for similar information requirements, as well as a 10 day period for making the required information available. Alberta legislation includes two documents – one is an estoppel certificate dealing with condominium fee payments, arrears and interest, and the other is an "information on request" which covers a host of other relevant information for which the corporation may charge a fee. Neither legislation explicitly provides for any deemed statements if the corporation does not provide the information within the required 10 day period.

In British Columbia, the information that must be contained in an information certificate is substantially similar to that in Ontario and Alberta. The corporation must provide the information certificate to the requesting individual within 7 days. Similar to Alberta, B.C. does not provide for any deemed statements if the corporation does not provide the information certificate within the required 7 day period.

Manitoba's new legislation provides for two different documents that should be provided to a buyer. At the time the agreement of sale is entered into the owner of the unit must provide the buyer with a Disclosure Statement provided by the corporation (in addition to the seller's own Disclosure Statement). The corporation's Disclosure Statement is prescribed from and contains information relating to a wide variety of topics, including insurance, reserve funds, restrictions on the use of units and the fundamentals of the corporation's governance. The Status Certificate is usually requested immediately prior to the closing of the sale and is also a prescribed form. The document must contain (i) any amount owing by the unit owner and (ii) if, to the corporations knowledge, there has been any breach to the declaration, bylaw or rules outlined which the subsequent owner may be required to remedy. Additional information as to the unit's entitlement to parking and storage locker spaces is also provided.

Legislation in New Brunswick and Saskatchewan, as well as Newfoundland and Labrador, require corporations to provide an estoppel certificate to an owner or purchaser. The contents of the certificate are prescribed and much the same as under the Ontario legislation. In New Brunswick, as in Ontario, where the corporation fails to provide the certificate within 10 days the legislation deems certain statements to be made in favour of the person obtaining and relying on it.

In Quebec, a prospective purchaser of a unit may request a statement of the common expenses due in respect of that unit; the syndicate may provide such a statement provided it gives prior notice to the current unit owner. The purchaser is only required to pay the expenses owing in respect of the unit of the statement is provided within 15 days of the request.

In Nova Scotia, a status certificate is only required pursuant to an amalgamation (amalgamation is discussed further at section 6(d), below).

(l) Communication to Owners – Information Certificates

With the enactment of its reforms that came into force on November 1, 2019, Ontario required more communication with owners and mortgagees and thus introduced an obligation to circulate three new types of information certificates: (a) Periodic Information Certificate, to be sent out twice a year; (b) Information Certificate Update, to be sent out only when certain prescribed events occur, e.g. change in a director(s); and (c) New Owner Information Certificate, to be sent out to new owner (a type of welcome package).

(m) Condominium Authority of Ontario (CAO) - Annual Filing and Notice of change

As discussed in section 5(a) below, the Ontario government created the CAO. It provides a multitude of services to the industry including information, the CAT, mandatory training of directors, but also a public registry of information related to all corporations. Every corporation must register with the CAO, submit an annual filing and pay an annual fee per voting unit (paid by the corporation as a general expense and thus forms part of the unit's common expenses). The registry has to be current and therefore, there is a statutory obligation on corporations to file a Notice of Change if certain prescribed events or changes occur in the corporation.

4. Rights and Obligations of the Owners and Mortgagees

(a) Contribution to Common Expenses

An individual unit owner is not generally responsible for day to day operation and maintenance often associated with home ownership. This is normally the responsibility of the corporation and is paid for through the common expenses paid to the corporation by the owners of each unit. Simply put, common expenses are the expenses related to the performance of the objects and duties of a corporation, as well as all expenses specified as common expenses in the condominium's declaration. This includes just about everything required to operate the building, such as utilities, services contracts, maintenance and repairs (not of the units), management, reserve fund, and so on.

As owners in the corporation, each unit owner must contribute to the condominium's common expenses in the proportion set out in the declaration. In British Columbia, effective March 7, 2018, variable user fees are permitted based on a consumption-based rate which must be reasonable and permitted by either a bylaw or rule. As stated above, in most jurisdictions, failure of the unit owner

to pay common expenses fees when they are due provides the corporation with a lien on the interest of the owner. (See section 3(g), above.)

In Alberta, these fees are referred to as "administrative expenses".

(b) Annual General Meeting

All jurisdictions require the corporation to hold an annual general meeting. At the meeting, the corporation may address matters such as the election of the board, reserve fund financing, insurance, the appointment of the auditor (or waiving of an audit), budgetary discussions, as well as other matters including the election or appointment of a chair (if required), review of officers' reports, and the review committee reports. All owners receive notice of the annual general meeting, and are entitled to attend, speak, and, if qualified, vote, either in person or by proxy.

All jurisdictions, save for Yukon, New Brunswick, and Nova Scotia outline additional specific requirements that the annual general meetings must follow.

In Alberta and Saskatchewan, an annual general meeting must convene every calendar year and within 15 months of the conclusion of the immediately preceding annual general meeting. In Saskatchewan, an owner may call an annual meeting if the board has failed to convene an annual meeting with 15 months.

In Manitoba and British Columbia the annual general meeting must be held in temporal proximity to the corporation's fiscal year end; More specifically, within 6 months (Manitoba) and 2 months (British Columbia). In both provinces the corporation does not have to hold an annual general meeting if all eligible voters waive, in writing, the holding of the meeting. In British Columbia, voters must also approve the budget for the coming fiscal year, and elect a council by acclamation.

In the Northwest Territories, the legislation provides that the board shall convene an annual general meeting of the owners within 6 months of the corporation's fiscal year end.

In P.E.I., the annual general meeting must be held no more than 3 months after the registration of the declaration and description and subsequently within 15 months after the holding of the last preceding annual meeting.

In Ontario, the board must hold a general meeting of owners no more than three months after the registration of the declaration and description, and subsequently within 6 months of the end of each fiscal year. The board must send a preliminary notice to owners prior to sending a notice of meeting, using mandatory forms within the prescribed timelines. The preliminary notice to owners provides information on the upcoming meeting, including inviting potential candidates to notify the condominium of their interest to run for the board along with the new mandatory disclosure statement, and provides a deadline for owners to request that additional material be included in the notice of meeting. In Ontario, the annual general meeting must deal with the submission of the audited financial statements (and report of the auditor), and the election of directors. There is also a mandatory proxy form which must be used for meetings of the owners. One of the new reforms in Ontario is the ability to have electronic voting (ballots) if the Corporation has passed the appropriate by-law.

In both Ontario and P.E.I., the legislation expressly states that an owner may raise for discussion any matter relevant to the affairs and business of the corporation, but if the matter is more than a procedural issue no vote can be taken on it as it must be disclosed in the notice calling the meeting.

In Quebec, as is the case for all corporations, the annual meeting of co-owners has to be called within six months after the close of the fiscal year.

In Newfoundland and Labrador, legislation provides that at each annual meeting (for corporations having 10 or more units) the owners must set the corporation's fiscal year and appoint an auditor.

(c) Leasing of Units

In all jurisdictions, owners are entitled to lease or rent their units, subject to restrictions set out in the condominium legislation and the corporation's declaration, by-laws or rules. However, if an owner chooses to lease or rent their unit(s), the owner is the legal landlord, and accordingly remains responsible for the actions of their tenants.

In some jurisdictions, such as Ontario and Manitoba, the legislation requires the owner to provide leasing information to the corporation. In both provinces, the owner of a unit who leases the unit or renews a lease of the unit must, within 30 days of entering into the lease or the renewal, notify the corporation that the unit is leased and provide certain information (set out in regulations) regarding the lease and the lessee to the corporation.

In Saskatchewan it is required to give notice to the corporation that a unit is to be leased, along with the new tenant's information (set out in regulation) and the landlords contact information. The corporation can also require a damage deposit from the unit owner.

In Alberta , and the Northwest Territories, the owner must give the corporation written notice of the name of the tenant renting the unit within 20 days from the commencement of the tenancy, as well as 20 days after the tenant ceases to rent the owner's unit. If the individual renting or leasing a unit from an owner damages any property or contravenes a by-law, the corporation has the ability to terminate the lease, and has the ability to require the tenant to give up possession, providing a minimum of one month's notice is given.

In Manitoba, the unit owner has the duty to take all reasonable steps to ensure a residential tenant or commercial lessee's compliance with the legislation, as well as the declaration by-laws and rules of the corporation. If the tenant fails to comply, the corporation is entitled to terminate the tenancy, but is required to provide the tenant and the owner with reasonable notice of the breach, and must allow the owner reasonable time after receiving the notice to remedy the contravention or breach prior to effecting any termination.

Interestingly, Manitoba also allows corporations to impose a levy on any unit owner who rents their unit, as long as this right is contained in the corporation's declaration. The levy amount must not exceed the prescribed maximum and must be specified in the by-laws. This amount can only be used by the corporation to pay for repairs to, and extraordinary cleaning of, the common elements that arose from the rental, or reasonable costs associated with ensuring compliance by the residential tenant or commercial lessee with the legislation, declaration, by-laws and rules.

Any balance remaining must be returned to the unit owner at the termination of the tenancy or lease.

In Ontario, the owner is also required to take all reasonable steps to ensure the tenant's compliance. Unlike Manitoba, however, court intervention is required to terminate a tenancy. The owner or the corporation, among others, may seek a court order compelling the tenant's compliance; only where the tenant contravenes such an order can they seek a further order evicting the tenant. Moreover, in certain cases the dispute must first proceed by way of mediation or arbitration, discussed below at section 5(a).

As mentioned above, British Columbia's legislation requires a disclosure statement to be provided when an owner developer rents or intends to rent one or more residential strata lots. The developer must give a copy of the statement to the superintendent of the strata lot and to every prospective purchaser. As mentioned earlier, recent amendments to British Columbia's regulations allow corporations to impose a maximum fine of $1,000 for each contravention of a by-law that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel or temporary accommodation.

In Quebec, an owner who leases his unit must notify the syndicate and provide the name of the lessee. The tenant is liable for complying with the by-laws once the owner or the syndicate have provided him with a copy of them.

In New Brunswick, *The Residential Tenancy Act* applies to all tenancy agreements. This agreement shall be in a Standard Form Lease prescribed in the regulations under the Act and the lease shall include a schedule containing the by-laws and rules of the corporation.

(d) Mortgagee's Rights

Two particularly important rights of mortgagees are the right to vote in place of the owner, and the right to collect the owner's contribution towards common expenses.

(i) Right to Vote

Under certain conditions, the mortgagee may vote in place of the owner. In Ontario, a mortgagee of a unit has the right to vote at the meeting in the place of the unit owner, provided that the terms of the mortgage so provide, the mortgagee has notified the corporation of its right, and the mortgagee has given notice to the corporation and the owner at least 4 days before the date of the meeting of their intention to vote in place of the owner.

Legislation in Saskatchewan, Manitoba, P.E.I., and the three territories provides the mortgagee with a right to vote similar to that in the Ontario legislation. However, in P.E.I. the mortgagee need only provide 2 days' notice to the corporation. In Saskatchewan, Manitoba, and the three territories, the legislation does not provide an express time limitation for giving such notice.

In Alberta, where an owner's interest is subject to a registered mortgage, a power of voting that is conferred on an owner by the legislation or by way of a by-law may be exercised in the following order: first, by the mortgagee, if any, if that mortgagee has notified the corporation of the mortgage

in writing; second, by the owner; third, by any other mortgagee so entitled in the order of their pre-established priority, providing that the mortgagee has given written notice to the corporation of their mortgage. However, neither the mortgagee nor the owner can vote if the unit has arrears.

In British Columbia, the mortgagee of a strata lot is entitled to vote, but only in respect of insurance, maintenance, finance or other matters affecting the mortgage's security, and only if: (i) the mortgage gives the mortgagee the right to vote; and (ii) the mortgagee has given written notice of their intention to vote to the corporation, the owner, and (if applicable) the tenant.

The legislation in Newfoundland and Labrador, New Brunswick and Nova Scotia, provides that the mortgagee may only exercise the voting or consent rights of an owner in cases where the mortgagee is a "mortgagee in possession".

In Quebec, hypothecary creditors of a unit must sign any decision to terminate the co-ownership.

(ii) Right to Collect Common Expenses

In Saskatchewan, Manitoba, Alberta, and Ontario, the mortgagee has the right to collect the owner's contribution to the common expenses and must promptly pay the collected amounts to the corporation on the owner's behalf. In Ontario, the mortgagee also has the right to pay the owner's arrears and associated costs under a lien, and to add the total amounts paid to the debt secured by the mortgage, or to deem the unit owner in default for the failure to pay common expenses. Alberta extends the power to offset contributions to the owner's tenant, when served with proper notice by the corporation.

(e) Amending the Declaration or Description

All Canadian jurisdictions permit amendments to the corporation's declaration or description in certain circumstances, by the consent of the owners and/or by court order. Where proceeding by consent, all jurisdictions require the approval of a supermajority of the owners for substantive amendments or changes to the declaration, description, or plan. The specific procedures vary from province to province.

In Ontario, the usual method is by board resolution approving the amendment, which then must be consented to in writing by owners holding at least 80% or 90% of the voting rights, depending on the type or nature of the amendment. Alternatively, an owner or the corporation can apply to the court for an order amending the declaration or description; however, this can only be done where the amendment is to correct an error or inconsistency. In addition, one can apply directly to the Director of Titles for an order to correct an error or inconsistency apparent on the document's face.

Alberta only permits an amendment to a condominium plan by court order, which will be granted where (i) the amendment has been approved by at least 75% of the owners representing at least 75% of the voting rights, (ii) the court is satisfied that no unfair prejudice will result to the owners and the holders of any encumbrances registered against title, and (iii) the necessary survey documents have been provided. Exceptionally, however, any owner or owners may modify the condominium plan without amendment if the modification consists of re-dividing or consolidating a unit or units.

In British Columbia, most amendments to a strata plan require a unanimous vote at an annual or special general meeting of the owners, followed by an application to the Registrar of Titles. Exceptions to the unanimity rule include division or consolidation of strata lots that do not change the total rights or obligations of the new lot or lots, and adding land to the strata plan to create a new lot or expand an existing one.

In Quebec, modifications to the declaration require the approval of a majority of the owners representing 75% of the voting rights, except where the modifications are to the by-laws, where only a simple majority of votes is required.

In Manitoba and the Northwest Territories, a declaration or plan may be amended with the written consent of owners holding at least 80% of the voting rights, or such higher percentage as is specified in the declaration. In P.E.I. and the Yukon, amending the declaration, description or plan requires the written consent of all owners and holders of encumbrances. Where such consent cannot be obtained Manitoba and the Yukon permit the amendment of the declaration, description or plan by court order. In the Northwest Territories, by contrast, an owner or holder of an encumbrance may apply to the court to object to such an amendment. A court hearing such applications must take into consideration, among other factors, any prejudice to the rights or interests of the owners, and what course of action would be most fair and equitable.

Under Newfoundland and Labrador's legislation, an amendment requires consent of the owners holding at least 80% of the voting rights, however, there is no alternative to amend through a court order if such consent cannot be obtained. In P.E.I., similar to Ontario, a corporation may obtain a court order amending the declaration or description, but only where needed to correct a manifest error or inconsistency.

In New Brunswick, for a non-phased development, an amendment to a declaration or description requires the consent of owners holding at least 60% of the voting rights (i.e. 60% of the owners on the common elements) or great percentage if specified in the declaration. In Nova Scotia, such an amendment requires the consent of 80%. In both provinces, the Director or Registrar of Condominiums may amend the declaration or description without the owners' consent to correct a clerical or mathematical error. Additionally, in both provinces, amendments can also be made without the consent of the owners if the amendment in question creates a subsequent phase of a phased development condominium property.

In Saskatchewan, an amendment to the condominium plan requires the written consent of at least 80% of all unit owners and holders of encumbrances, as well as the approval of the Controller of Surveys and the issuance of new titles through an application to the Registrar of Titles. An owner or holder of an encumbrance that has not consented may apply to court to object to such amendment, and the court may make any order it considers fair and equitable. However, the Controller of Surveys may order a correction of a clerical error in the plan without need to seek an amendment to the condominium plan.

5. Dispute Resolution

(a) Mediation and Arbitration

Alternative dispute resolution, often referred to as ADR, refers to resolving disputes in ways other than formal litigation in the courts. Mediation and arbitration are two of the most common forms of ADR. Many jurisdictions across Canada provide for ADR in their condominium legislation.

In Ontario, every agreement between a declarant and a corporation, two or more corporations, a corporation and an owner (if the agreement relates to changes the owner has made to the common elements), or a corporation and a person for the management of the property, is deemed to contain a provision stating that any disagreement between the parties, with respect to the agreement, shall be submitted to a person selected by the parties for mediation. If the matter goes to mediation but is not resolved or settled (or the parties cannot agree on a mediator), then the dispute must go to arbitration under the *Arbitration Act, 1991*.
With respect to disagreements between the corporation and the owner, Ontario's legislation deems every declaration to contain a provision that the corporation and the owners agree to submit to mediation and arbitration a disagreement between them with respect to the declaration, by-laws or rules. In addition, the legislation sets out certain terms concerning mediation, including how the mediator's costs are to be shared. The wording of this subsection has caused interpretation problems, as it is not always clear when a disagreement concerns compliance with the legislation, for which the corporation can proceed directly to court, as opposed to a disagreement that must proceed by way of mediation and arbitration. As a result, many corporations enact a mediation and arbitration by-law to govern the procedure for mediation and arbitration.

On November 1, 2017, a number of material changes were made to the Ontario *Condominium Act, 1998.* As part of those changes, one of the new components was the introduction of a Administrative Authority called the Condominium Authority of Ontario ("CAO") as per Parts 1.1 and 1.2 of the *Condominium Act, 1998*. Within the CAO's jurisdiction was the creation of a tribunal, the Condominium Authority Tribunal (the "CAT"). The purpose of the CAT is to create an online tribunal that helps to settle and decide condominium related disputes in Ontario. The online dispute process has three distinct components: online negotiation, online mediation and an online tribunal decision where negotiation and mediation fail. Currently, the CAT is limited to making decisions in respect of the disclosure of records to unit owners. The CAT has its own rules of practice which can be found at the Condominium Authority of Ontario's website. The CAT renders decisions which are also available on the website and on Canlii. The intention is to expand the CAT's jurisdiction under the Act to address and settle more disputes early in the conflict, including multi-party disputes.

In Alberta, the legislation provides that any dispute respecting any matter arising under the legislation or in respect of the by-laws of a corporation may, with the agreement of the parties to the dispute, be dealt with by mediation, conciliation, arbitration under the *Arbitration* Act or similar ADR mechanisms. Alberta's legislation leaves room for the government to appoint a tribunal that may hear a dispute respecting any matter specified in the regulations. When established, this tribunal is intended to have the same powers as a civil Court and all decisions are binding. It is understood that Alberta's tribunal will be established in phase 4 of its regulations project.

Manitoba similarly permits parties of a dispute to submit it to arbitration or mediation, providing the parties agree in writing to such a form of dispute resolution. Additionally, Manitoba's legislation provides, in certain circumstances and if provided for in the declaration, that where the corporation and the owner do not agree as to the purchase price of his/her unit and common interest, the owner may elect to have the fair market value of his unit and common interest determined by arbitration, by serving a notice to that effect on the corporation. In circumstances where an owner disagrees as to the sale price of their unit (where they voted against the sale of part of the common elements, and the corporation is purchasing the owner's unit), legislation in P.E.I., the Northwest Territories, Yukon, Nunavut also briefly mentions arbitration between an owner and corporation, In New Brunswick the right to arbitration by an owner is realted to the market price fo the sale of the part of the common elements and not to the market price of the owner's unit. and similarly provides that the owner may elect to have its fair market value determined by arbitration.

With regard to mediation, in Manitoba the tenant or the corporation may make an application under *The Residential Tenancies Act* to have the Director of Residential Tenancies investigate, endeavour to mediate a settlement, and determine a matter arising from an alleged breach of the declaration, by-laws or rules of the corporation by a tenant.

In addition to permitting arbitration for disputes concerning the purchase price of the part of the common elements, New Brunswick permits arbitration for any dispute under its legislation between: (i) the corporation and an owner; (ii) the corporation and a manager of the condominium property; (iii) the corporation and any other corporation; and (iv) two or more owners. New Brunswick's arbitration provisions are similar to Ontario's in the sense that the disputing parties are deemed, for the purposes of the *Arbitration Act*, to have entered into an arbitration agreement for the purpose of such dispute. However, in New Brunswick, the arbitrator is chosed by the Director of condominiums and not by the parties.

The Nova Scotia legislation is substantially similar to that of New Brunswick, while specifying also that the *Commercial Arbitration Act* applies to any dispute between the corporation and the occupier of a unit, as well as to any dispute between an owner of a unit and the occupier of any other unit. Condominium Dispute Officers will be available to help to resolve certain disputes between condominium owners and condominium corporations, with an appeal procedure available. These officers are either residential tenancies officers under the *Residential Tenancies Act* of Nova Scotia or the Registrar of Condominiums

Amendments to the *Residential Tenancies Act* of Nova Scotia allow condominium corporations, in very limited circumstances, to take on the role of the landlord in a residential tenancies hearing if the owner of a rented condominium unit is unwilling to enforce the Declaration, By-laws, or Rules of the condominium corporation

In its existing legislation, British Columbia allows a strata corporation, an owner or a tenant to refer a dispute to arbitration if the dispute concerns any of the following: (i) the interpretation or application of the Act, regulations, by-laws or rules; (ii) common property or common assets; (iii) the use or enjoyment of a strata lot; (iv) money owing; (v) an action or threatened action; or (vi) the exercise of voting rights by a person who holds 50% or more of the votes at an annual or special general meeting.

A major overhaul to the ADR process in British Columbia came into effect in late 2016. The 'Civil Resolution Tribunal,' will effectively provide an alternative dispute resolution process whereby collaborative, problem based approaches are employed in place of traditional litigation based resolution methods. The Tribunal has recently commenced l, and it will largely be used in the settlement of small claims and strata disputes including damage claims, issues regarding common property, interpretation of the legislation and non-payment of monthly fees. It is hoped that all of this may be accomplished online without the necessity of personal attendance. Ontario is also working to establish a significant online dispute resolution capability.

In Saskatchewan, when there is a dispute between owners or between the corporation and one or more owners, the parties to the dispute may agree in writing to submit the dispute to arbitration by a single arbitrator under the *Arbitration Act, 1992*. The costs of arbitration are to be shared equally between the parties; an interest may be registered against the title to a unit for the amount of the owner's share of the costs that remain unpaid.

Quebec does not provide any form of specific mediation or arbitration provisions relating to syndicates and co-owners. However, Quebec law generally permits parties to any dispute to agree to submit their dispute to arbitration.

(b) Oppression Remedies

The oppression remedy, despite its longstanding application to provincial and federal corporate law, has only recently been implemented in condominium legislation, and in only a few Canadian jurisdictions. Generally speaking the oppression remedy in traditional Canadian corporate law grants a court a broad remedial power to grant relief against any conduct by a business corporation that is "oppressive", unfairly prejudicial, or unfairly disregards the interests of the applicant, typically a shareholder or other interested party. Due to its equitable nature, the oppression remedy involves court considerations that differ substantially from traditional legal remedies stemming from breach of contract, negligence, and tort claims.

Ontario, Manitoba and Saskatchewan have included this type of remedy in its condominium legislation. It provides that an owner, a corporation, a declarant or a mortgagee of a unit may make an application to the court for an order seeking relief from oppressive conduct by an owner, a corporation, a declarant or a mortgagee. The court may grant relief including an order prohibiting the impugned conduct (i.e. injunctive relief) and an order requiring the payment of compensation.

Interestingly, though the role of the oppression remedy in traditional corporate law is to prevent the corporation from engaging in unfair actions against shareholders and other stakeholders, Ontario has gone further and permits an application for the oppression remedy to be brought by the condominium corporation against an owner. This has started to become another enforcement tool for corporations against owners, as well as for claims by owners. In Saskatchewan, the new oppression remedy section, section 99.2 permits "An owner, a corporation, a developer, a tenant a mortgagee of a unit or other interested person" may make application to the court. They may seek relief based on oppressive conduct by "an owner, a tenant, a corporation, a developer or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial…".

The legislation does not preclude the oppression remedy from being invoked concurrently with other enforcement remedies, and does not require the implementation of any other remedy as a condition precedent before the employment of the oppression remedy. Notably, it is not necessary to proceed first by way of mediation or arbitration (discussed at section 5(a), above) before seeking relief through the oppression remedy.

Currently, Ontario and Saskatchewan are the only jurisdictions that provides a full oppression remedy in its condominium legislation. British Columbia's previous legislation had similar oppression provisions, but the current statute has narrowed the remedy. B.C. now provides that an owner or tenant may apply to the court to make any interim or final order the court considers necessary to prevent or remedy the following: (i) a significantly unfair action or threatened action by, or decision of the corporation; or (ii) a significantly unfair exercise of voting rights by a person who holds 50% or more of the votes at an annual or special general meeting. The court may also, on application by an owner, tenant, or mortgagee, order the corporation to perform, or to cease contravening, the legislation, by-laws, or rules.

Alberta courts can deal with allegations of improper conduct by a corporation, director, owner, or developer. Improper conduct is defined to include non-compliance with the Act or bylaws, conduct or exercise of powers that is oppressive or unfairly prejudicial or that unfairly disregards the interests of an interested party. The court can appoint an investigator, give directions, award compensation and costs or give other appropriate orders.

Lastly, Quebec provides co-owners the ability to seek similar remedial relief from the court. An owner has the right to address the court, within 60 days following a meeting, in order to void a decision of the assembly based on: (i) a decision of the assembly being biased; (ii) a decision taken with intent to injure the co-owners or in contempt of their rights; or (iii) an error made in counting the votes.

All other jurisdictions are silent on the availability of the oppression remedy, or any analogous power of the court, to remedy similar unfair acts.

6. Other Matters

(a) Forms of Condominium Corporations

Ontario law sets out two principal types of condominium corporations: (i) "freehold condominium corporations", where the ownership (freehold) interests in the condominium property are divided into individual units and common elements, and (ii) "leasehold condominium corporation", where the leasehold interests in the condominium property are divided instead.

In addition to the more common "standard" freehold condominium corporation, which entails a building and land subdivided as above, there are several additional subtypes of a freehold condominium corporation:

i. "common elements condominium corporation", where the corporation has common elements only, without any individual units. In this case the common elements and the corporation are "tied" to the non-condominium parcel of land (the home). This is registered on title of the home, and is often called the "POTL" (parcel of tied land). One often sees

this form of condominium corporation in the case of a golf course and housing development, where the golf course is the corporation, and is tied to each of the surrounding homes.

ii. "phased condominium corporation", a variant of the standard freehold condominium corporation, which allows the addition of new phases of the condominium, containing new units or common elements.

iii. "vacant land condominium corporation", where (as the name suggests) no building or structure exists on the land. However, there is an obligation of the purchaser to build a home with a stipulated period of time.

With regard to a phased condominium corporation, the declarant may create additional units or common elements (a "phase") after the registration of the declaration and description, provided that: the corporation is a phased condominium corporation, and the declaration so indicates; the description contains a description of the land owned by the declarant not included in the phase; and the board has been elected at a meeting of owners held when the declarant did not own a majority of the units.

New phases to the condominium corporation are created upon the registration of an amendment to the declaration and description. The process is quite complex, and the amendment has numerous requirements as to its content.

Similar to Ontario, the condominium legislation in Newfoundland and Labrador permits "common elements condominium corporations", "phased-development condominium corporations", and "vacant land condominium corporations".

British Columbia allows "leasehold strata plans", "phased strata plans", and 'bare land strata plans", which are also generally similar to their Ontario counterparts.

Alberta and Saskatchewan also allow for the development of condominiums in phases. Alberta has conventional condominiums, bareland condominiums, barely-blended condominiums (developed by practice but not in legislation) and phased condominiums. Where a plan is registered as a condominium plan under which it is to be built in phases, the plan must be accompanied by a phased development disclosure statement that is registered as part of the condominium plan. The development of the phases is subject to numerous other statutory requirements. Saskatchewan allows for bareland condominium corporations as a distinct type or category.

Manitoba has implemented amendments to its condominium legislation to permit phased condominiums. As with the other jurisdictions which contemplate phased condominiums, the legislation imposes detailed and complicated requirements for registering a phase.

New Brunswick and Nova Scotia have only one form of condominium corporation but distinguish between the categories of property associated with the corporation, each of which have different requirements. Its legislation classifies condominium properties into commercial, residential, bare-land, mixed-use, and phased-development. Similarly, Alberta permits "bare-land units" within a condominium, though without treating such condominiums as a distinct type.

In New Brunswick, phased-development projects are slightly different in that every time a phase is added the common property around the buildings keeps expanding to include all new buildings until the whole proposed land in the project is contained at the last phase. They are not separate entities to be joined together at the end.

The Northwest Territories, Nunavut and P.E.I. permit leasehold condominiums, in addition to freehold condominiums.

Nova Scotia's legislation states that a phased-development condominium is exempt from the subdivision-approval requirement, if it meets all prescribed requirements. The acceptance of such constitutes a subdivision of land, and creates a lot as described in the description of that phase.

(b) Disclosure Statement

The "disclosure statement" is a document which the declarant (most often, the condominium developer) must provide to prospective purchasers (and in Manitoba, may also apply to a certain degree in sales by other sellers), allowing the prospective purchaser to make an informed decision about buying a unit. The disclosure statement usually includes, among other things, whether the corporation is a freehold condominium corporation or a leasehold condominium corporation, a general description of the property, and whether a building on the property or a unit or a proposed unit has been converted from a previous use.

Both Ontario and the new legislation of Manitoba have extensive legislative provisions dealing with the disclosures and documents that must be provided to the prospective purchaser. The agreement of purchase and sale of a unit is not binding on the purchaser until the declarant has delivered all of the documents required by the legislation, including a disclosure statement, to the purchaser. The legislation of both provinces provide a "cooling-off" period of 10 and 7 days respectively after the purchaser receives all of the required disclosure documents (or after an amended statement has been received due to a material change(s)) . During this time the purchaser can terminate or cancel the purchase for any reason, before accepting a deed or transfer to the unit. Alberta has similar disclosure provisions.

In Quebec, a promoter selling a unit must provide the prospective purchaser with a memorandum containing information including a description of the building, the professionals involved in its construction, and the budget and management of the building. It must also provide a copy or summary of the condominium's declaration.

British Columbia's legislation does not provide for a similar disclosure requirement to that of Ontario's, but makes reference to "rental disclosure statements," which are only required when an owner developer rents or intends to rent one or more residential strata lots.

The New Brunswick, Northwest Territories, Nova Scotia, P.E.I., and Saskatchewan statutes, as well as the legislation in Newfoundland and Labrador, similarly require certain information to be provided to the prospective purchaser from the declarant in order for the agreement of purchase and sale to become binding on the parties. However, P.E.I. does not specifically provide for a "cooling-off" period. Rather, it provides that 10 days prior to delivering a deed, the declarant must deliver to the purchaser a further copy of each document or instrument required by the legislation, or a confirmation that the document or instrument is identical to a corresponding document

previously received. As is the case in Ontario, other provinces and territories including: Nova Scotia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, and Saskatchewan all provide a 10 day "cooling-off" period after receipt of the information.

Alberta legislation also states that when a plan is registered as a condominium plan under which a building or land is to be developed in phases, the plan, at the time when it is registered with respect to the initial phase, must be accompanied by a phased development disclosure statement that is registered as part of the condominium plan. Alberta legislation also provides the purchaser with a 10 day "cooling-off" period from the date of execution. (Phased condominiums are discussed further at section 6(a), above.). Alberta developers are required to provide a disclosure binder to purchasers containing a number of documents, including the proposed budget, proposed plan, proposed management agreement, the floor plan of the unit, description of facilities and landscaping etc.

Neither the legislation in the Yukon nor Nunavut makes any specific reference to disclosure statements.

(c) Shared Facilities

It would appear that only Ontario uses the terminology "shared facilities", although it is not formally defined. The term "shared facilities" covers any facilities or services shared by two or more corporations. The term includes recreation centers, utility systems, parking lots and other such facilities that are capable of being shared. The relationship between the two or more corporations that share facilities is usually governed by a "mutual use agreement", "shared facilities agreement" or "reciprocal cost sharing agreement". The agreement sets out the terms governing the mutual use, provision, maintenance and/or the cost-sharing of facilities or services between the parties. In Ontario, the boards of the corporations may periodically make, amend or repeal joint by-laws or rules governing the use and maintenance of such shared facilities, and the owners' approval of these must comply with the legislation.

Similar to the Ontario concept of "shared facilities", Quebec provides for the sharing of "common services". Although "common services" is not defined, a syndicate may join an association of co-ownership syndicates formed for the creation, administration and upkeep of common services for several immovables held in co-ownership, or for the pursuit of common interests.

In Manitoba, a condominium corporation may enter into a "mutual use agreement", which is defined under the legislation.

The other jurisdictions do not have similar legislative provisions to that of Ontario and Quebec regarding the use and governance of shared facilities.

(d) Amalgamation of Corporations

Many jurisdictions allow condominium corporations to amalgamate. Each jurisdiction has different requirements and procedural steps that must be followed.

In Ontario, the regulations restrict amalgamation to two or more standard condominium corporations; that is, a freehold condominium corporation that is not a vacant land or common

elements condominium corporation. Phased condominium corporations may only amalgamate once all phases are completed.

Amalgamation is effected by registering a declaration and description amalgamating the corporations, providing the board of each has held a meeting, and the owners of at least 90% of the units have consented in writing within 90 days of the corporation's meeting. The amalgamation occurs by completing the strict procedural steps and ultimately registering an amalgamating declaration and description. It is a complex and expensive process; while it was designated to solve a problem in the condominium industry, it has rarely been attempted.

In Saskatchewan, the Northwest Territories, New Brunswick and Nova Scotia, two or more corporations may amalgamate. In New Brunswick, amalgamation may only occur if the properties are contiguous (adjoining parcels of land). The board of each corporation must call a meeting of all owners and mortgagees to approve the amalgamation. The board of each corporation shall provide all owners and holders with notice of the meeting, as well as a copy of the proposed condominium plan and by-laws, a statement indicating the number of "unit factors" to be allotted to each unit (that is, their relative sizes), an estoppel certificate, a statement setting out the priority that is to be given to each of the registered interests with respect to the common property and the units that are affected by the amalgamation, and any other necessary documentation.

In Saskatchewan, consent of 80% of owners and mortgagees is required for amalgamation of condominium corporations. This consent can be obtained in a meeting in person or by proxy or by signature on a resolution or any combination of those options. Any non-consenting owner or mortgagee may make an application to court to prevent the amalgamation.

The corporations of NWT and Nova Scotia must obtain the consent of at least 80% of all unit owners and mortgagees. In Saskatchewan, if decided at a meeting of owners (in person or by proxy) then unanimous consent must be achieved, and if by written consent then 80% of all unit owners is required. Any consent is subject to the right of challenge by the owner.

Legislation in Manitoba Newfoundland and Labrador similarly requires the corporation to provide the owners with certain documentation in order to allow them to make an informed decision regarding the amalgamation. Once a meeting has been called, and the owners have received all of the required information, owners of at least 80% of the voting rights in the amalgamating corporation must consent in writing to the amalgamation proposal. To effect an amalgamation, the proposed declaration and by-laws for an amalgamated corporation must be submitted to the district registrar for registration in the appropriate Land Titles Office.

A difference in Alberta's legislation is that 30 days' notice must be given for the corporation's meeting, and 75% of the owners representing 75% of the unit factors must approve the amalgamation. Within 6 months from the day that the Registrar registers the amalgamation, the amalgamated corporation must, for the purpose of electing a board, convene a meeting of the persons who are entitled to vote pursuant to the Act.

Under British Columbia's legislation, a 75% vote by each of the corporations at an annual or special general meeting is required to approve the amalgamation.

In New Brunswick, the owners of at least 60% of each corporation must vote in favour of the amalgamation.

In Quebec, the only way to join two or more syndicates is to terminate each one and recreate a new syndicate. Termination requires the approval of 75% of the co-owners and 90% of the voting shares of all co-owners, plus the consent of 100% of all hypothecary creditors.

7. Conclusion

Despite its many similarities, Canadian condominium legislation displays great diversity, and remains in a state of constant change. Since the first edition of the Primer was published, Manitoba, Saskatchewan, New Brunswick and Newfoundland and Labrador have completely overhauled their condominium legislation. Ontario's reformed legislation and new legislation for the licensing and regulation of condominium property managers has received Royal Assent (the regulations are being drafted along with the establishment of two distinct Administrative Authorities), and Alberta is developing its regulations in 4 phases. .

CCI's National Government Relations Committee will continue to monitor these legislative changes, as well as seek to participate in shaping them, in furthering CCI National's mandate to represent the interests of condominium stakeholders and to support the condominium industry. In drafting reforms, lawmakers have often looked to what has already been tried in other provinces. Cross-Canadian legislative comparisons such as the present one may then not only describe the landscape of today, but help point the way to possible future legislative directions.

On behalf of the CCI National, we hope that this summary has been helpful in giving a tour of Canada's condominium legislation. We invite your comments and suggestions.

Appendix

Table of Legislation

The following is a table of the name, and citation of the legislation and regulations of each jurisdiction, including their date of last amendment and number of sections.

Provinces/ Territories	Legislation	Regulations	Last Amended	Number of Sections
Newfoundland and Labrador	*Condominium Act, 2009*, S.N.L. 2009, c. C-29.1	Condominium Regulations, C.N.L.R. 955/96	Act: 2010 Regulations: 2001	Act: 21 2009 Act: 93 Regulations: 9

New Brunswick	*Condominium Property Act*, S.N.B. 2009, c. C-16.05	General Regulation, Condominium Property Act, N.B. Reg. 2009/169	Act: 2012 and 2015 Regulations: 2012, 2015 and 2017	Act: 77 Regulations: 38 + 16 forms
Nova Scotia	*Condominium Act*, R.S.N.S. 1989, c. 85	Condominium Regulations, N.S. Reg. 60/71	Act: 2010 Regulations: 2009	Act: 46 Regulations: 83 + 2 schedules + 23 forms
Prince Edward Island	*Condominium Act*, R.S.P.E.I. 1988, c. C-16	General Regulations, P.E.I. Reg. EC10/78	Act: 2009 Regulations: 2009	Act: 36 Regulations: 66 + 4 schedules + 18 forms
Quebec	*Civil code of Québec* S.Q. 1991, ch. 64 (Book 4, Title 3, Chapter III: Divided co-ownership of immovables)	None	Act (for co-ownership): 2002	Act (for co-ownership: 72 (CCQ, arts. 1038 – 1109)
Ontario	*Condominium Act*, 1998, S.O. 1998, c. 19	a) Description and Registration, O. Reg. 49/01 b) General, O. Reg. 48/01 c) CAT, O. Reg. 179/17 d) CAO, O. Reg. 181/17 e) Condo Returns O. Reg. 377/17	Act: 2017 Regulations: a) 2017 b) 2017	Act: 183 Regulations: a) 51+15 forms b) 77+41 forms
Manitoba	*The Condominium Act*, C.C.S,M., c. C170 *https://web2.gov.mb.ca/laws/statues/ccsm/c170e.php#202*	Condominium Regulation 164/2014	Act: 2015 Regulations: 2015	Act: 311 Regulations: 53 +3 Schedules and 15 forms
Saskatchewan	*Condominium Property Act*, 1993, S.S. 1993, c. C-26. 1	Condominium Property Regulations, 2001, R.R.S. c. C-26.1 Reg. 2	Act 2013 Regulations: 2016	Act 115 Regulations: 70 + 38 forms + 1 table
Alberta	*Condominium Property Act*, R.S.A. 2000, c. C-22 *Condominium Property Amendment Act, 2014* SA 2014 c10	Condominium Property Regulation, Alta. Reg. 168/2000	Act: 2009 Regulations: 2006	Act: 81 Regulations: 82
British Columbia	*Strata Property Act*, S.B.C. 1998, c. 43.	a) Bare Land Strata Regulations, B.C. Reg. 75/78 b) Bare Land Strata Plan Cancellation Regulation, B.C. Reg. 556/82	Act: 2009 Regulations: a) 2010 b) none c) 2018	Act: 322 + schedule Regulations: a) 21 b) 4 c) 18 + 26 forms

		c) Strata Property Regulation, B.C. Reg. 43/2000		
Northwest Territories	*Condominium Act*, R.S.N.W.T. 1988, c. C-15	Condominium Regulations, N.W.T. Reg. 098-2008	Act: 2011 Regulations: none	Act: 31 Regulations: 15
Yukon	*Condominium Act*, R.S.Y. 2002, c. 36	Condominium Certificate of Title Form, Y.C.O. 1977/101	Act: 2003 Regulations: none	Act: 25 Regulations: 2
Nunavut	*Condominium Act*, R.S.N.W.T. 1988, c. C-15.		Act; 2010 Regulations:	Act: Regulations: