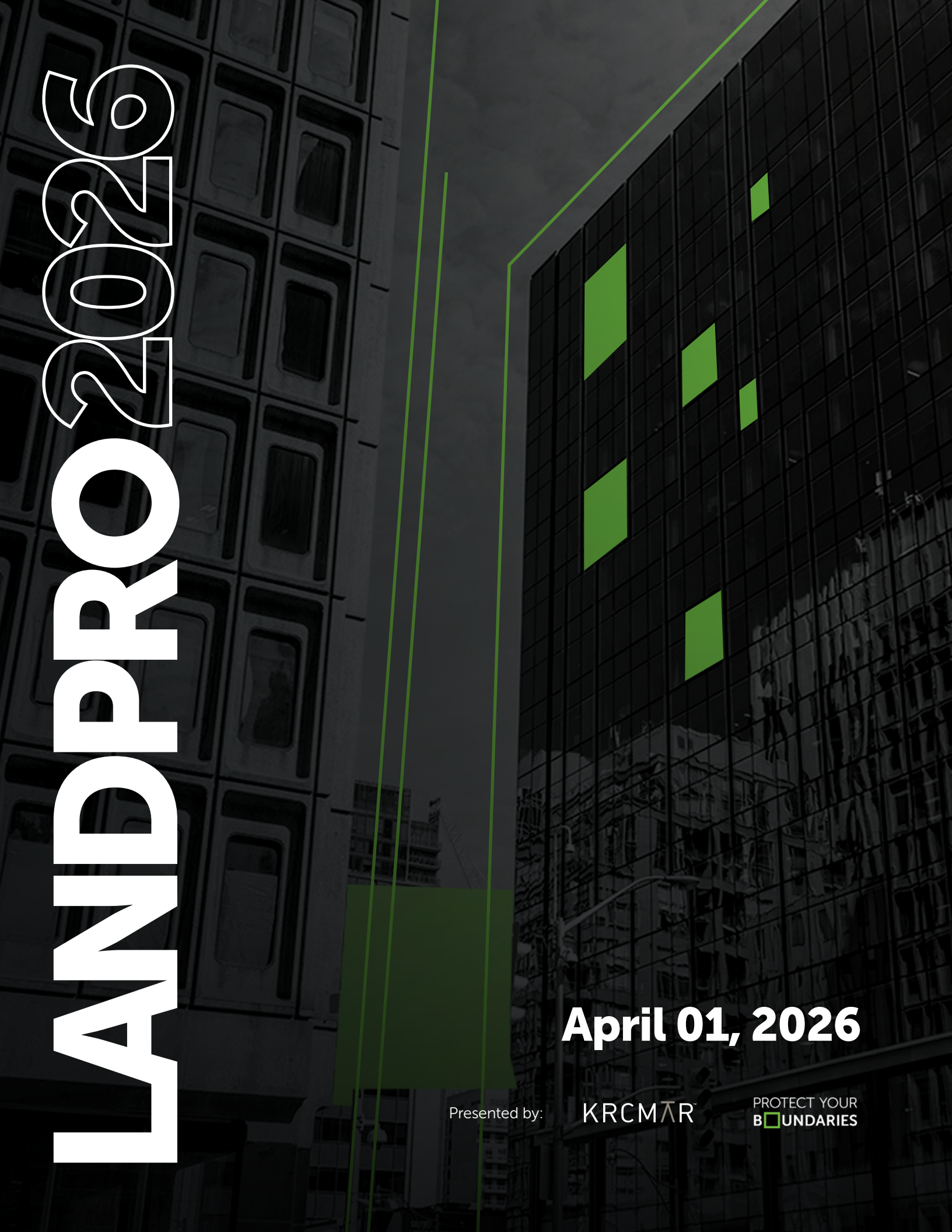
LANDPRO 2026



April 01, 2026

Presented by: KRCMAR

PROTECT YOUR BOUNDARIES

LANDPRO CONFERENCE 2026

THE PREMIER "HOW-TO" CONFERENCE

for Land, Condo, and Development Professionals

Date: **April 01, 2026**
Time: **7:45 AM - 4:45 PM**

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Master of Ceremonies: Sarah Turney, Partner, Fasken Martineau DuMoulin LLP.

OUR SPONSORS

Your sponsorship enabled us to bring together top professionals, foster invaluable networking opportunities, and engage into discussions that shape the future of our industry.

Thank you for your ongoing support, dedication, and partnership. We look forward to continuing this collaborative journey and achieving greater milestones together in the future.

01

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Protect Your Boundaries is for homeowners, REALTORS®, and land professionals seeking the knowledge, tools and services to prevent and resolve property boundary issues and complete successful real estate transactions.

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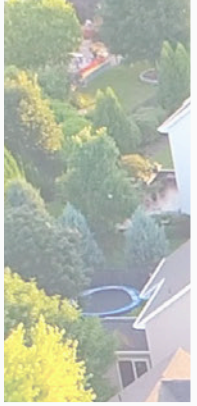
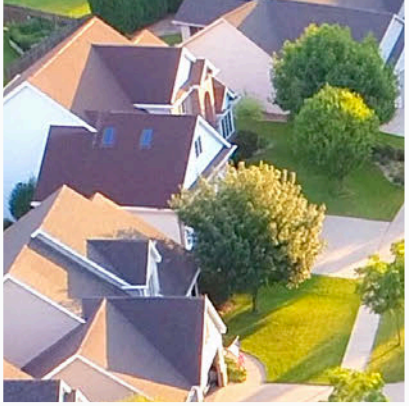
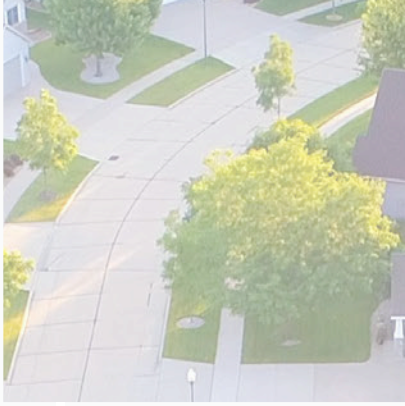
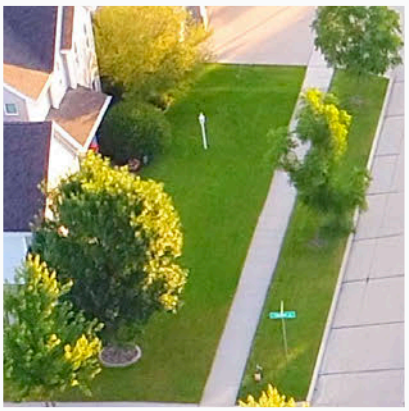
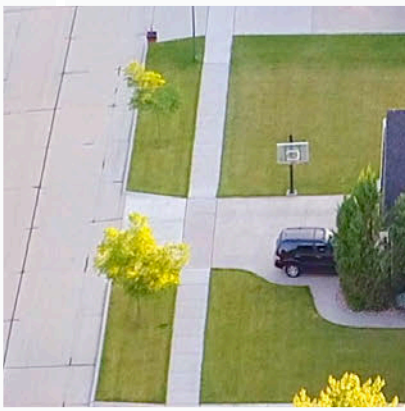
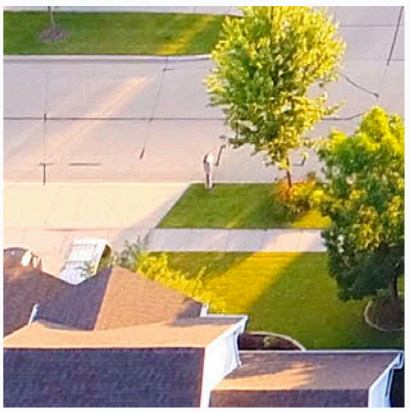
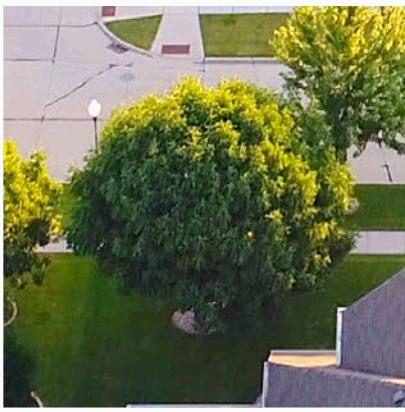
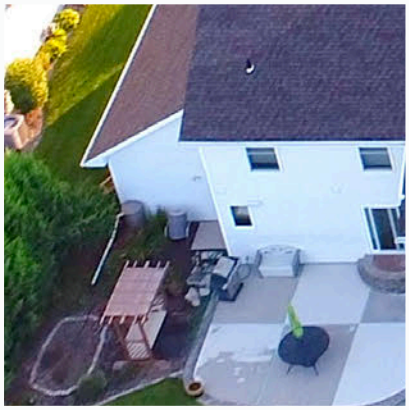
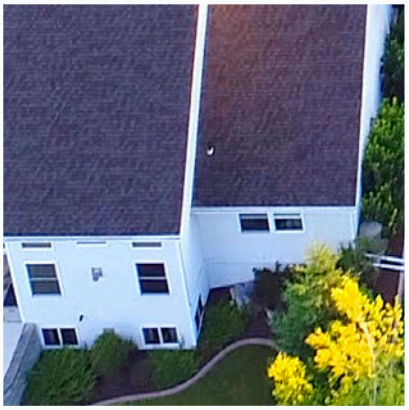



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ProtectYourBoundaries.ca

info@protectyourboundaries.ca

SURVEY PLANS

PROTECT YOUR BOUNDARIES

Here at Protect Your Boundaries, we are surveyors at heart. We offer the largest online database of existing surveys in the GTA, all of which are available at the click of a button and in the comfort of your home, office or on the go on your mobile device.

1. Visit our website: ProtectYourBoundaries.ca
2. Type in the home address.
3. Go to the Property Page to see the surveys and reports for that address.
4. Simply add to cart, proceed through the secure checkout and a PDF plan will be emailed to you instantly.

If there is no survey available, you can have us do a custom search, you can commission a new survey, or even get a boundary stakeout done by us.

What does a survey plan show ?

- Displays the legal boundaries of the property
- The size and shape of the property
- The location of right of ways and easements
- Location of physical monuments that mark the limits of land (i.e survey bars)
- The house and other buildings and physical features like fences, decks, patios, driveways and pools.

PROPERTY REPORTS

When buying a house, there are a few steps that need to be taken in order to do due diligence but also to protect yourself whether you are the agent or buying/selling the home.

Protectyourboundaries.ca offers a variety of reports (Property Reports & Easement Reports) that include vital information to help in the decision of the sale and to ensure all information is disclosed and clear.

In a Property Report, you get:

- Parcel Register (official property document from the Province of Ontario).
- Easement Instruments (official documents from the Province of Ontario).
- Plain English explanation of easements, liens and encumbrances.
- The PYB Official guide to evaluating and researching a property.
- Report does NOT include a full survey (SRPR).

*Optional: verify property area (square footage); Reports will require 1-2 business days to complete.

KRCMAR™

Krcmar Surveyors Ltd. is a premier land surveying firm with a decades-long legacy of excellence, innovation, and precision in Ontario's development landscape. As a multi-generational, family-run company, Krcmar has been at the forefront of land surveying for over 40 years, shaping some of the most iconic projects in the Greater Toronto Area, including the Rogers Centre, L Tower Condos, and The Ritz Carlton Residences. Renowned for their expertise in condominium development, municipal infrastructure, and complex urban projects, Krcmar combines cutting-edge technology with time-honored expertise to deliver unmatched accuracy and efficiency. Their proprietary Condo: Start to Finish Process™ streamlines development, helping clients navigate intricate regulatory and technical challenges with ease. With a reputation built on trust, innovation, and a relentless commitment to excellence, Krcmar Surveyors Ltd. continues to set the standard for land surveying in Ontario.

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P 905.738.0053 - F 905.738.9221
info@krcmar.ca - www.krcmar.ca

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AT-A-GLANCE OVERVIEW

www.krcmar.ca

1137 Centre Street
Thornhill ON L4J 3M6
P 905.738.0053
F 905.738.9221

OUR COMPANY

At Krcmar Surveyors, we specialize in large and multi-faceted projects—condominiums, complex construction layouts and urban cadastral surveys. Our industry-leading brand is known for its professionalism, experience, reliable service and

OUR PEOPLE

The key to our success is directly related to our investment into the quality, skill and expertise of our dedicated and talented people. Experienced both within Canada and internationally, our staff is comprised of only the best in the industry. Our professional team currently consists of 50 surveyors and technologists, with a complement of 10 survey crews – more than capable of handling any-sized development.

OUR SERVICES

While we specialize in sizeable high-rise redevelopments for condominiums and complex construction, we are also a full-service

OUR HISTORY

Our company began as a small family business, established by Vladimir Krcmar working out of his basement in 1981. We quickly forged a reputation for excellence within Ontario's legal and development communities. Throughout our history, we have proudly remained a family managed business that always puts special care and attention into everything we do. We have expanded to successfully undertake countless large and complex projects throughout Ontario – becoming the recognized leader in the industry we are today.

OUR INNOVATIONS

Catapulting surveying into the digital era, Protect Your Boundaries Inc. was launched by Krcmar Surveyors in 2014. The "Uber" of the surveying world, PYB is the most comprehensive online source for boundary information available to the public. Through our cutting-edge technology and partnership with Teranet Inc., we provide customers with a database of more than 1 million Ontario survey plans. Licensed by the Association of Ontario Land Surveyors, PYB is also a provider of smaller residential surveying services and consultations.

OUR SIGNS

Our iconic sign—a common sight throughout top-tier developments in the Greater Toronto Area—stands as a hallmark for landowners and developers who have a high regard for excellence.

KRCMAR™

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OUR PROJECTS

Amacon

Parkside Village Redevelopment, Mississauga

Aoyuan

M2M Condos - Newtonbrook Plaza Redevelopment, Yonge St.

Armour Heights Developments

The Kent - 89 Avenue Road, Yorkville

Bazis

Emerald Park, Yonge St.
Exhibit, Bloor St.

Broccollini

Leftbank, 83 River St.
River & Fifth

Camrost Felcorp

Yorkville (former Four Seasons)

Carterra

65 King St. E. Redevelopment, King St. E. & Church St.
Portland Commons

Castlepoint

Toronto Waterfront Film Studios, Commissioners St.

Castle Group

Insignia Condos, Sheppard Ave. E.

Cityzen/Castlepoint

L-Tower, Yonge St.

Cityzen/Fernbrook

Absolute Towers – "Marilyn Monroe" Buildings
Art on Main Condos
D'Or Condos
Garrison Point Redevelopment
Pier 27 Redevelopment

Cityzen/Greybrook

306 Davenport Redevelopment

Collecdev

2450 Victoria Park Ave.
30 Tippett Rd. Redevelopment
36 Tippett Rd. Redevelopment
300 Bloor Street West
500 Wilson Avenue
Westwood Gardens, Yonge St.

Cortel Group

Expo Condos, Highway 7
Abeja Condos Jane/Rutherford Redevelopment
OAK Condos, Dundas St. E Oakville

The Daniels Corporation

1525 Kingston Road, Pickering
Eglinton Ave. W. & Erin Mills Parkway Redevelopment
Olivia Marie Gardens
Regent Park Redevelopment
TIFF/Bell Lightbox
Waterfront, Queens Quay E.

The Daniels Corporation/Diamond/Kilmer

Humber River Hospital Redevelopment, Keele St.

Davpart

481 University Ave.
Avro Condo

Diamante

100 Davenport
The Diamond, Churchill St.
Mirabella, Lake Shore Blvd. W.

Dream/Kilmer

49 Ontario St.
Pan-Am/Canary District Redevelopment

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OUR PROJECTS

Eastons

60 Mill St.
Dundas Square Gardens, Dundas St. E. & Jarvis St.
Icona – Hilton Garden
Rosedale on Bloor Condos, Bloor St. E.
Yonge Park Plaza, Yonge St. & Wilson Ave.
Yorkdale Holiday Inn, Dufferin St.

Edilcan

Valhalla Town Square, Gibbs Rd. & Highway 427

El-Ad Group

Emerald City, Sheppard Ave. E. & Don Mills Rd.
Lansing Square Re-Development, Sheppard Ave. E. & Victoria Park Ave.

El-Ad Group/Freed

Galleria Mall Re-Development, Dufferin St. & Dupont St.

Emblem Developments

Arte Residences, 89 Dundas St. W., Mississauga
Artform, 86 Dundas St. E., Mississauga

Freed

60 Colborne, Church St.
650 King St. W., King St. W. & Bathurst St.
Art Shoppe, Yonge St. (Construction only)
Thompson Toronto Hotel & Residences,
King St. W. & Bathurst St.

Ghods Builders Inc.

5959 Yonge St. Condos

Graywood Group

241 Church Street
250 Lawrence Ave. W.
33 Parliament Street
506-516 Church Street
Eastern Ave Condos, Eastern Ave.
Ocean Club, Etobicoke
Peter Adelaide Condos, Adelaide St. W.
Ritz Carlton Hotel and Residences, Wellington St. W.
Scoop Condos, St. Clair Ave. W.
Scout Condos, St. Clair Ave. W.
The Mercer, John St.
Wonder, 462 Eastern Ave.

Great Gulf

357 King West Condos
401 King St. W.
Gehry + Mirvish
One Bloor East (Construction only)
Parkside Condos, Queens Quay E. (Construction only)
PACE Condos, Dundas St. E. (Construction only)

Greenland Group

King Blue Condos, King St. W.
Lakeside Redevelopment, former Fed-Ex lands
Queens Quay E.

Harhay Construction

75 The Esplanade
900 The East Mall

Kingsett Capital

2075 Kennedy Road
50 Cumberland St. & 37 Yorkville Ave. Redevelopment
Cumberland Square Condos, 2 Bloor St. W.
Valhalla Executive Centre Redevelopment, The East Mall

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OUR PROJECTS

Lamb Developments

Bauhaus, King St. E.
Bread Co., McCaul St.
East Fifty Five, Ontario St.
The Harlowe, Richmond St. W.
Television City, Hamilton
Wellington House, Wellington St. W.
The Woodsworth, Richmond St. W.

Lash Group

The Barrington, Bathurst St.
Distinction Condos, Soudan Ave.
ME Condos, Meadowglen Place

Metropia

AYC Condo, Davenport Rd.
New Lawrence Heights Redevelopment
The Rocket, Wilson Ave.

Metroview

8888 Yonge St.
9839 Yonge St.

Mizrahi Developments

The One, Bloor St. W. & Yonge St.
180 Steeles Ave. W.
181 Davenport Rd. Redevelopment

Mod Developments/Intracorp

Massey Tower, Yonge St. (Construction Only)

North American Development Group

Agincourt Mall Redevelopment

Northam Realty Advisors

2 Carlton St.
250 University Ave.

Oxford Properties Group

Square One Expansion and Revitalization

Pinnacle

Harmony Village, Sheppard Ave. E.

Remington Group

Downtown Markham, Warden Ave.

Rogers Group & Urban Capital

M-City Redevelopment, Mississauga

Talon

Former Trump Hotel and Residences, Bay St. & Adelaide St. W.

TAS

2 Tecumseth St.
385 The West Mall
888 Dupont St.

Tribute Communities

1325 The Queensway
210 Bloor St. W.
Artistry Condo, Dundas & McCaul
The College Condo, College St.
Linx Condo, Main St. and Danforth Ave.
Max Condos, Mutual St.
Parkside Square, Sheppard Ave. E.
RCMI, 426 University Ave.
The Stanley, Carlton St.
Y&S, 2161 Yonge St.

Urban Capital/Northam Realty

Kingsway on the River, Dundas St. W.
M-City
The Ravine

Zancor Homes

The Branch Condos
King City Condos

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F 905.738.9221

OUR CLIENTS

Krcmar helps clients across the GTA stay ahead of the curve, solve challenges and navigate a new era in the land surveying industry.



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Thornhill, Ontario L4J 3M6
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Zeifmans is a distinguished full-service tax, accounting, and consulting firm headquartered in Toronto, Canada. Our reputable standing is underscored by our inclusion among the top 20 accounting firms in Canada in terms of revenue, and our recognition as a Top 10 Accounting Firm based on the excellence of our services in the Greater Toronto Area. In addition to our conventional offerings, our comprehensive suite of services encompasses business advisory, valuation, corporate finance, transaction services, corporate turnaround and insolvency, as well as estate and succession planning. We are steadfastly committed to assisting our expansive clientele, which numbers over 11,000 clients, across all phases of the business life cycle.

Since our inception in 1959, Zeifmans has consistently pioneered innovative solutions driven by astute creativity. Over six decades have transpired since our founding, during which time our local team has evolved into a diverse assembly of over 150 accomplished professionals. Our affiliation with Nexia, counted among the globe's top accounting and consulting networks, extends our reach to an extensive consortium of over 2,000 partners, with 260 firms, spanning more than 122 countries worldwide. Remarkably, a substantial portion of our client base, exceeding 4,000 private companies, have been our steadfast companions for generations. This enduring loyalty is a testament to the enduring trust that characterizes our client relationships, all united by the shared objective of business growth and prosperity.

For a comprehensive insight into our tax, accounting, and consulting services, please feel free to download our firm brochure by clicking here.

If you would like more information on how we can assist you, please contact Zeifmans today.

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TORONTO, ONTARIO,

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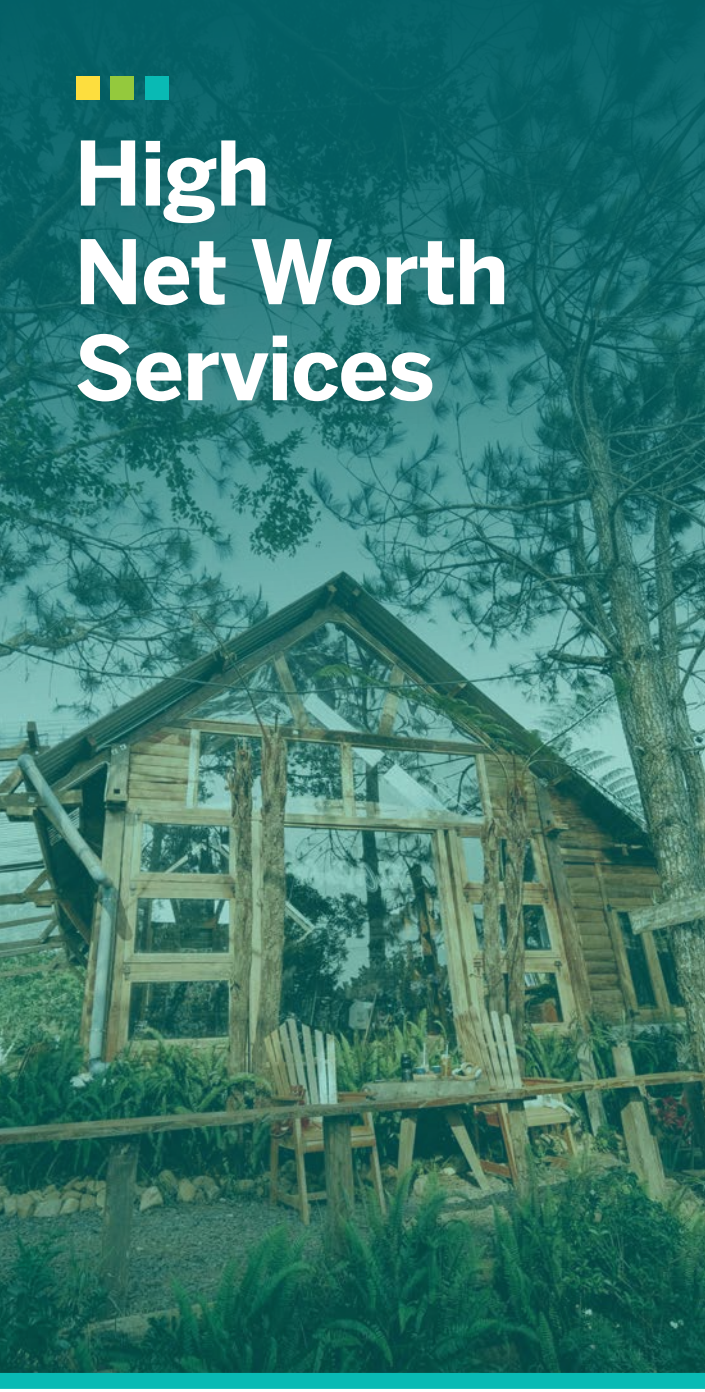

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You're building wealth over a lifetime...and longer

Whether you're an accomplished investor, owner-operator or have a stake in a private or family-owned business, your accumulated wealth is a direct result of your hard work and dedication. Wealth creation and preservation don't end with you, however. Your wealth can continue to grow for many generations, especially if you plan appropriately. By establishing the best financial and tax structures during your lifetime, you could avoid a possible reduction of the wealth you leave to next generations, and also positively impact the future financial success of your business and family.

Think of your wealth as a unique financial puzzle made up of many integrated personal and business- related pieces. These pieces include family issues, income and asset growth, investments, retirement, estate planning, and philanthropy.



We can help you organize and understand all of these pieces in order to develop effective tax and estate planning strategies that are tailored to your business. These strategies include minimizing taxes, maximizing cash flow, protecting your assets, driving results and building value.



We can help you with

- **Wealth Management**

  It goes without saying that it is crucial to protect your estate and business' assets. We can assist you with asset and investment monitoring, succession planning, real estate consulting, philanthropic planning and execution.

- **Tax and Estate Planning**

  You have worked hard to build your estate and now want to protect those assets. We can help you structure your business and estate to defer tax, save tax and protect assets for future generations.

- **Exit Strategies and Succession Planning**

  You need an exit strategy that will allow you a comfortable retirement, and a succession plan that lets you pass control to the next generation or a third party in a way that maintains the continuity of the business and your legacy.

- **Transactions and Valuations**

  If a merger or acquisition is in your future, our transaction and business management expertise can help you create the right deal for you and your business.



- **Compensation**

  Strategic compensation plans for you, your senior management and other employees will assist in maximizing retention and minimizing taxes, while keeping your business structure flexible and sustainable.

- **Compliance and Back-Office Support**

  We provide businesses with reliable, experienced support in handling daily accounting matters, and preparing your reporting obligations such as tax returns for both Canadian and US individuals and operations.

- **Family CFO**

  Our team of professional advisors can oversee all of your financial affairs. We partner with your advisors including lawyers, bankers, insurance brokers, real estate agents and investment advisors– streamlining and simplifying your life so you can focus on achieving your strategic goals.

Why choose Zeifmans?

Zeifmans is owned by entrepreneurs that started the firm as a small business over 65+ years ago. Now, three generations later, we continue to grow with over 175+ staff members, and remain owner-operated.

Therefore, we understand the needs of owner-operated and family-run businesses. We use our hands on experience and knowledge to customize proactive, innovative solutions for each phase of your business and estate's life-cycle. Our 13,000+ clients, including companies, professionals, executives and high-net-worth in individuals, rely on us for a variety of financial planning services to help them meet their financial goals. Regardless of where you're at in your business' life cycle, our trust and estate advisors, who work with trusts and estates of all sizes – some in excess of over $1 billion – can help. We partner with like-minded top lawyers and other professionals to create a plan to protect and grow your estate for generations.

Our partners draw on their combined hundreds of years of experience to provide tax, consulting, assurance and compliance services to our entrepreneur and high-net-worth clients. Zeifmans was recognized by Business Insider (2023) as one of the Top 10 Accounting Service Providers in the Greater Toronto Area. We are also a proud member of Nexia, one of the top global networks of independent accounting and consulting firms. Through Nexia, we have access to more than 185+ member firms across 115+ countries, enabling us to support your business as it grows and expands locally internationally.

We're your trusted advisor

You want a tax, accounting, and consulting partner who understands your needs and the full range of solutions available. One who works within the rules to make the rules work for you. Who gives you straightforward, intelligent advice that consistently adds to your bottom line.

Great ideas. Positive impact.
That's Zeifmans.

Contact us today

If you have any questions, please reach out to your Zeifmans advisor or contact our team using the details below:

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- **T: 416.256.4000**

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The real estate industry is constantly evolving

To succeed, it is essential to have a clear understanding of current performance, strategic cash flow planning, effective risk management, and a proactive approach to changing tax regulations. Whether you are entering the real estate market, a seasoned industry leader, or planning your exit strategy, Zeifmans is here to support you.

Our team of real estate experts' partner with builders, contractors, developers, property managers, and passive investors across North America, delivering comprehensive financial management, compliance, and tax planning solutions that drive profitability. We develop efficient tax strategies that allow our clients to focus on seizing new opportunities and driving growth.

Backed by over 65 years of experience, we provide trusted audit, accounting, tax, consulting, and compliance services to real estate partnerships, joint ventures, and corporations. At Zeifmans, we are committed to helping you navigate the complexities of the real estate landscape with confidence and success.

We are here for you

You need a tax, accounting, and consulting partner who truly understands your needs and leverages the full spectrum of solutions available. A partner who navigates the rules strategically to your advantage, delivering clear, insightful advice that consistently drives profitability.

Great ideas. Positive impact. That's Zeifmans.

Contact us today

Contact your Zeifmans advisor or one of the partners below:

- **Ahmad Aslam, CPA, CA, Partner**
  aa@zeifmans.ca | 647.328.7404
- **Enzo Lo Faso, Director**
  vl@zeifmans.ca | 416.256.7626

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201 Bridgeland Avenue | Toronto | Canada
416.256.4000 | zeifmans.ca

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Real Estate Industry Services



Zeifmans
Ideas with impact





Why choose Zeifmans?

We serve hundreds of clients in the real estate sector, as well as the professionals who support them – including architects, engineers, designers, property managers and surveyors operating across Canada, the U.S., and internationally.

As a member of Nexia, one of the world's top ten global assurance and advisory networks with over 180 member firms in more than 115 countries – we leverage this extensive network to help our clients grow.

Established in 1959, Zeifmans is led by 17 Partners and Principals, supported by a team of over 150 professionals.

We can help you with

- **Canadian Tax Consulting:**

  Including efficient tax structures and sophisticated tax minimization strategies that let you keep more of your hard-earned money.

- **Compliance:**

  With all aspects of tax, audit and regulatory requirements so you can focus on what you do best – growing your business.

- **Financing:**

  Including sourcing and negotiating the right financing for your projects – and advising on the optimal capital structure of your operations.

- **HST:**

  Where you may find complex and unexpected traps that can cause costly errors.

- **Succession Planning:**

  Including an exit strategy so you can retain your assets and a succession plan that preserves business continuity when you pass control to the next generation.

- **Transactions and Valuations:**

  If a merger, acquisition or exit is in your future including due diligence and tax minimization services.

- **US Taxation:**

  If you plan to invest abroad or manage a portfolio of US real estate.

- **Accounting, Audits and Reviews of Real Estate Operations:**

  For regulatory compliance, lender requirements, and effective risk management and decision-making. Assistance with implementation of new accounting standards including but not limited to IFRS 18 and IFRS 19.

The **BOUNDARYWISE ACADEMY** provides education and ongoing professional development top REALTORS® in Ontario. It arms them with the knowledge, skills and tools they need to reduce and eliminate boundary, easement and title related risk in every sale and purchase.

At **PROTECT YOUR BOUNDARIES** we have dedicated ourselves to helping Ontario's top agents and brokers drastically increase their knowledge and effectiveness at identifying and dealing with land, easement and boundary-related risks on both sides of the deal.

WWW.BOUNDARYWISE.CA

GOLD SPONSOR



DON'T LET YOUR REAL ESTATE DEAL BE AT RISK

Understand Land. Protect Your Clients. Build Your Business.

BOUNDARYWISE
Accreditation

PROFESSIONAL EDUCATION PROGRAM

BROUGHT TO YOU BY PROTECT YOUR BOUNDARIES KRCMAR

- GAIN KNOWLEDGE AND SKILLS
- UNDERSTAND LAND
- WIN MORE LISTINGS
- SEAL THE DEAL FASTER
- REDUCE YOUR RISK

COURSE OUTLINE

01 SURVIVING AND THRIVING IN THE NEW BOUNDARY REALITY

Introducing the world of boundary, easement and title issues.

02a HOW TO IDENTIFY AND VALIDATE A SURVEY PLAN

This course will make you the gatekeeper for your client and your deals, ensuring that when it comes to survey plans and the decisions you make based on them, you'll stay on side and out of trouble.

02b HOW TO READ A SURVEY PLAN

In this course you will learn the six key features to look for, how to interpret them on any survey plan, how to spot trouble and what to do about it.

03 THE A-Z OF TITLE INSURANCE

Title insurance (TI) is a great product, but few understand it. Learn all about TI and how to use your new-found knowledge to add immeasurable value to your clients' buying and selling experiences.

04 THE REALTOR'S GUIDE TO BOUNDARY DISPUTES

In this course you will learn how boundary disputes happen and why they are so common in the months after the real estate transaction. Most importantly you'll learn how to give great advice without getting dragged into the dispute.

05 EASEMENTS AND RIGHT-OF-WAYS

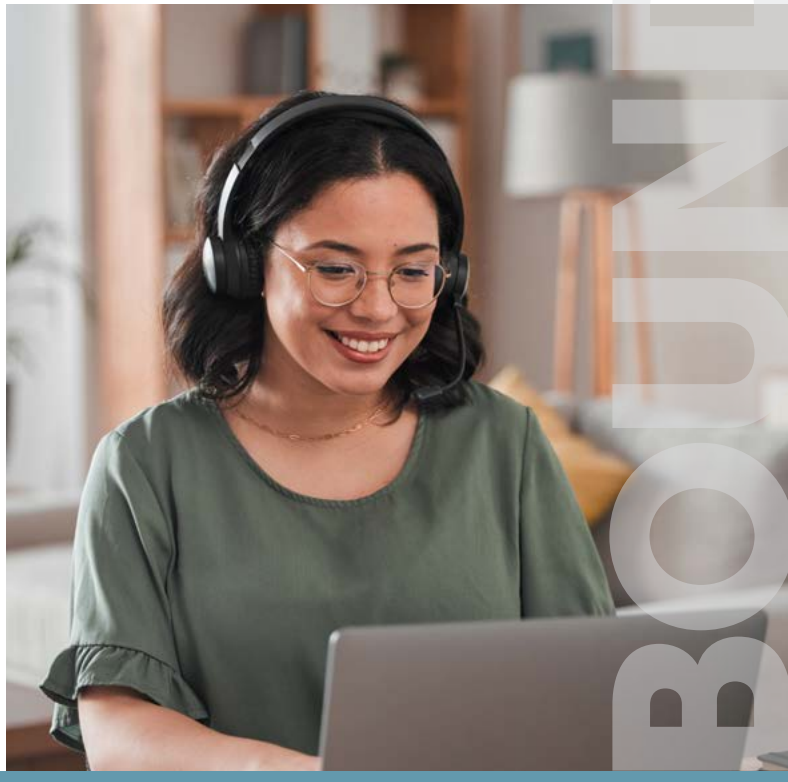
Discover easement identification, purpose, and impact on land use. Gain direct access to crucial official documentation for informed disclosure, safeguarding buyers, sellers, and yourself.

06 CONDOS 101

This course will equip you with the knowledge to identify issues, and understand the key documentation you need to review to help your client make the best condo decision possible.

07 DECIPHERING THE LEGAL DESCRIPTION

In this course you'll learn how to decipher any legal description and use the vital information in it to your clients' and your advantage.



BOUNDARYWISE

With 1,500 member companies, BILD is the voice of the home building, land development and professional renovation industry in the Greater Toronto Area.

The building and renovation industry provides $33 billion in investment value and employs 271,000 people in the region.

BILD is proudly affiliated with the Ontario and Canadian Home Builders' Associations.

GOLD SPONSOR

CIBC is a leading North American financial institution with 10 million personal banking, business, public sector and institutional clients. Across Personal and Small Business Banking, Commercial Banking and Wealth Management, and Capital Markets businesses, CIBC oers a full range of advice, solutions and services through its leading digital banking network, and locations across Canada, in the United States and around the world. At CIBC Commercial Banking, we help our clients create end-to-end financial solutions to address every business need at each stage of a company's development and operation. Our comprehensive approach helps companies finance growth, manage cash flow, increase eciency and mitigate risk. We provide high-touch, relationship-oriented banking and wealth management services to middle-market companies, entrepreneurs, high-net-worth individuals and families across Canada.

Most importantly, at CIBC, our purpose is to help make our clients' ambitions a reality. We live our purpose by making three commitments, and work every day to live up to them:

1. We make your goals our own.

2. We deliver excellence every day

3. We show appreciation for your business

GOLD SPONSOR

CIBC COMMERCIAL BANKING

YOUR PARTNERS IN PROPERTY MANAGEMENT

In today's dynamic environment, growing a successful property management firm requires innovative solutions and partnerships to deliver an exceptional customer experience.



AT CIBC, we understand that Property Management encompasses an incredibly large span of responsibilities. Your work directly affects people and businesses.

We can help! Our industry experts are here to support you every step of the way. Our comprehensive banking platform utilizes the latest technologies to help you easily manage your treasury and cash management operations.

Banking made easy with the CIBC Property Management Program*

- **Operating and Reserve Fund Accounts** – we offer market-leading interest rates, paid on your operating AND reserve account balances.
- **Simplified Fee Structure** – our single monthly fee per account that includes all daily transaction fees and is easily communicated to your Condominium Corporation clients.
- **Treasury Expertise** – our technology solutions include a market leading cash management platform to consolidate reporting, simplify electronic file transfer and customize permissions.
- **New account opening** - we speed up the activation process through various remote technologies and support you through our dedicated Client Solutions Team.
- **Financing for Property Managers** – we can assist with ownership changes, acquisitions, expansions and real estate needs.
- **Financing for Condominium Corporations** - your clients will benefit from common element, guest suite and superintendent suite financing.
- **Partnerships** - we offer an ever-growing roster of partnerships with external technology platforms for the property management industry to streamline integration.

Let's Connect

mailbox.nationalindustryprograms@cibc.com

* All programs subject to bank approval and loan amounts are subject to creditworthiness. Some restrictions may apply on account activity pricing. Products are subject to change.

The CIBC logo is a trademark of CIBC.

MELBOURNE
PROPERTY
MANAGEMENT

MELBOURNE PROPERTY MANAGEMENT is a Toronto-based firm serving the Ontario market. It is built on over 100 combined years of our team's experience in the property management industry. Melbourne Property Management aims to create a sense of community within each condominium we manage, in the same way that the City of Melbourne focuses on being one of the most liveable cities in the world.

We provide our clients with a comprehensive consulting services including design and amenity review, waste management and site logistics review, shared facilities structure and set up, as well as review and discuss new technologies, green loans, renewable energy solutions and financial operational cost estimates and fee structures. For more than a decade, team members from Melbourne Property Management have been trusted to work on over 800 condominium developments in Ontario.

Our clients benefit from a broad range of full services in addition to consulting, such as Interim-Occupancy Management, Condominium Management, Rental Management and our Resident Touch Point Program, financial reporting and administrative support. At Melbourne, we never forget that we are taking care of your home. We strive to be market leaders in innovative property management solutions. Our goal is to deliver quality service and advice over the full lifespan of a community, while also developing positive relationships with our stakeholders. We aim to provide the highest performance and standards.

SILVER SPONSOR



MELBOURNE PROPERTY MANAGEMENT

Melbourne Property Management is a Toronto-based firm serving the Ontario market. It is built on over 30 combined years of our team's experience in the property management industry. Melbourne Property Management aims to create a sense of community within each condominium we manage. We provide our clients with a broad range of full services and support, including consulting, on-site and off-site management, financial reporting, and administrative support. At Melbourne Property Management, we never forget that we are taking care of your home.

What We Do?

We strive to be market leaders in innovative property management solutions. Our goal is to deliver quality service and advice over the full lifespan of a community, while also developing positive relationships with our stakeholders. We aim to provide the highest performance and standards. We provide our clients with comprehensive consulting services including design and amenity review, waste management and site logistics review, shared facilities structure and set up, as well as review and discuss new technologies, green loans, renewable energy solutions and financial operational cost estimates and fee structures. For more than a decade, team members from Melbourne Property Management have been trusted to work on over 900 condominium developments in Ontario.

Get in Touch

1244 Caledonia Rd. Toronto, M6A 2X5 416-546-2126 contact@melbourpm.ca melbournepm.ca



Condominium Management

Our Melbourne Property Management team's established reputation and knowledge of the condominium industry provides the communities they take care of with the integrity, reliability, and security that these communities deserve. Based on our expertise and resources, we offer highly customized condominium management plans to suit the needs of every community. We strive to take care of the community, not just simply manage the building.
We do this by:

- Developing and educating managers to ensure they are equipped to handle the ever-changing challenges of property management.
- Paying above-market salaries to attract and maintain the best talent in the industry.
- Ensuring our team has access to relevant expertise, training, and resources.
- Provide customer service-focused solutions for the communities they manage.

Property Management Consulting

When embarking on a new condominium development, it is critical that services of an experienced and competent management company be retained. Our consultants can ensure the operational fulfillment of the project's vision and can also function as a valuable resource to help with issues or questions that may arise during the development phase.

Our team's work with some of Ontario's most respected developers over the past 30 years has allowed us to build a wealth of experience in consultancy services across Toronto and the GTA. We have also worked with key developers in Barrie, Hamilton, Kitchener/Waterloo, Ottawa, Muskoka, and Sudbury. Our consultancy services continue to be highly sought after within the development industry.

MELBOURNE
PROPERTY
MANAGEMENT

Get in Touch

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Interim Occupancy Condominium Management

When opening a newly constructed community, there are several essential items that need to be given special consideration, to ensure that your purchaser's expectations are managed, and the experience they receive is reflective of your brand.

The team at Melbourne Property Management have learned a few lessons along the way, having opened hundreds of new buildings over the past decade. We understand that it is critical that a well-structured opening plan be established, to be used by both the management team and the Declarant. It is important that all parties are aligned in their approach, and that a focus and priority be given to communication with both the owners and construction team during the interim occupancy period.

We understand that Interim Occupancy Management is very different from managing an existing community, and that additional resources, subject matter experts and experience are paramount to a smooth opening and transition to a well-functioning condominium.

If you are embarking on a new condominium development, have a new community that will soon be occupying, or would simply like to know more about how the team at Melbourne might be able to help, we would be more than happy to have a conversation. We are a friendly team, committed to providing trusted and timely advice.

MELBOURNE
PROPERTY
MANAGEMENT

Get in Touch

1244 Caledonia Rd. Toronto, M6A 2X5 416-546-2126 contact@melbourpm.ca melbournepm.ca

Meet Our Team

MELBOURNE PROPERTY MANAGEMENT



Julian McNabb

Chief Executive Officer

Julian.McNabb@Melbournepm.ca 416-546-2126 ext. 102



Joff Elliot

President

Joff.Elliot@Melbournepm.ca 416-546-2126 ext. 101



Matt Newton

Chief Operating Officer

Matt.Newton@Melbournepm.ca 416-546-2126 ext. 103



Carlo Russo

Chief Financial Officer

Carlo.Russo@Melbournepm.ca 416-546-2126



Darla Ahmeti

Vice President Operations

Darla.Ahmeti@Melbournepm.ca 416-546-2126 x 157



Lori Melanson

Senior Director of Accounting

Lori.Melanson@Melbournepm.ca 416-546-2126 x 105



Rolland Almeida

Director of Client Accounting

Rolland.Almeida@Melbournepm.ca 416-546-2126 x 171



Laura Elliot

Director Of Human Resources

Laura.Elliot@Melbournepm.ca 416-546-2126 x 106

AIRD BERLIS

AIRD & BERLIS is a leading Canadian law firm based in Toronto, serving clients across Canada and globally. Our team of more than 200 lawyers, land use planners and patent agents provides strategic legal advice in all principal areas of business law.

With one of the largest real estate practice groups in the GTA, Aird & Berlis has the breadth and depth of experience to handle any real estate deal. Our Real Estate Group assists clients with the purchase, sale and development of real property, leasing transactions and all types of real estate financing. We have extensive experience representing clients involved in the development, construction and management of office buildings, hotels, residential and commercial condominiums, residential rental projects, retirement homes and shopping centres. Our experience extends to infrastructure planning, financing and procurement.

Our Municipal & Land Use Planning Group is one of the largest and most highly-recognized practice groups of its kind in Canada. Our dedicated lawyers and skilled land use planners devote their practice to matters relating to municipal law, land use planning and development law. We act on behalf of landowners and developers, municipalities and public agencies, elected officials and local board members, institutional clients, utility companies, as well as public interest groups.

SILVER SPONSOR

Real Estate Group

As one of the largest real estate law groups in Canada, we provide full-service legal support to developers, REITs, municipalities, lenders, property managers, institutional investors and international businesses entering or expanding within the national real estate market.

Our Real Estate Group is recognized for its transactional expertise, helping clients unlock value throughout the property lifecycle – from land assembly and acquisition to financing, leasing, asset management and eventual sale. We represent Canadian and international clients in both single-asset and multi-property portfolio deals, guiding them through due diligence, title and off-title review, regulatory and environmental considerations, closing strategy and risk allocation. Whether managing a large-scale mixed-use project, refinancing a national portfolio or addressing cross-border acquisition risks, we provide practical advice that supports execution and long-term success.

Our core services include:

Transactions & Acquisitions/Dispositions: We represent clients in the purchase and sale of all types of real estate, from single assets to complex multi-property portfolios. Our lawyers handle due diligence, title matters, risk allocation and closing strategy to ensure transactions are executed efficiently and strategically.

Condominium Projects: We help developers structure and complete condominium projects from start to finish. This includes guidance on disclosure documents, sales and marketing compliance, Tarion warranty administration, deposit protection, builder licensing, registration and closings. We also advise on post-turnover obligations and governance matters. Our team supports a wide range of condominium models, including mixed-use and phased developments that incorporate residential, commercial and institutional components.

Distressed Projects: We assist clients in navigating distressed real estate challenges by managing enforcement and restructuring processes such as foreclosures, receiverships, CCAA and BIA proceedings and workouts. We represent lenders, developers, landlords, tenants and court officers on matters ranging from single assets to large portfolios. Trusted for precedent-setting restructurings, we provide strategic guidance to clients facing market disruption and complex distress situations.

Financings: We advise lenders and borrowers on a wide range of real estate financing transactions. Our experience includes conventional mortgage lending, mezzanine financing, private placements, bond offerings and infrastructure project financing. We also support creative financing structures, such as synthetic leases and syndicated loans. Our lawyers assist with mortgage enforcement, including power of sale, foreclosure and covenant enforcement proceedings.

Hospitality: We provide strategic legal support to hotel owners, operators and developers. Our work includes hotel acquisitions, dispositions, management agreements, franchise arrangements, construction and project financing. We understand the operational and brand requirements that govern hotel investments and have led major hotel transactions across Canada, including boutique properties and multi-asset portfolios.

Leasing: We act for both landlords and tenants on commercial lease negotiations and workouts. Our lawyers structure and document office, industrial, retail and ground leases, as well as rooftop licences, solar agreements and wind turbine arrangements. We assist U.S. and international brands with market entry and Canadian leasing strategy, and have deep experience in LEED-certified properties. We also advise on enforcement, dispute resolution and restructuring in distressed situations.

REITs: We advise public and private REITs on real estate transactions, structuring, leasing, tax, securities compliance and financings. Our team includes lawyers from across the firm who work collaboratively to support REIT clients with equity and debt offerings, SIFT rule compliance, and complex acquisitions and dispositions. We are longtime trusted counsel to Allied Properties REIT, the Skyline Group and other prominent industry players.

Municipal, Land Use Planning & Development Group

The Aird & Berlis Municipal, Land Use Planning & Development Law Group is one of the largest and most highly recognized of its kind in Canada. We act on behalf of numerous municipalities and public agencies, as well as large and smaller-scale developers, institutional and industrial clients, landowners, elected officials and local board members, utility companies and public interest groups.

Our lawyers are leaders in navigating the ever-evolving legislative regime governing land development in Ontario. We advise on all aspects of land use planning law, ranging from assistance with zoning reviews and simple land use approvals (including minor variances and consent applications) to complex and lengthy development matters and disputes, such as contentious official plan and comprehensive zoning by-law amendments and appeals. Our lawyers routinely work with our four professional in-house land use planners who also provide invaluable assistance to our clients.

Our core services include:

General Municipal Law: We provide expert advice on municipal powers, procedures and legislation, including by-law interpretation, governance issues and enforcement matters.

Planning & Development Approvals: We advise on all aspects of land use approvals, from minor variances and consent applications to complex official plan and zoning amendments.

Development Matters and Disputes: Our lawyers regularly appear before the Ontario Land Tribunal, municipal councils and committees of adjustment. We represent litigants at all levels of court and support clients in the mediation and resolution of land use disputes.

Expropriation Proceedings: Our team handles projects from start to finish, advising municipalities and other public authorities on environmental assessments, documentation, negotiations and compensation disputes before tribunals and courts.

Ontario Heritage Act: We have specialized expertise handling heritage matters, including designations, conservation districts, and heritage easement agreements as well as heritage alteration and demolition permits.

Contracts and Agreements: We draft and negotiate all manner of contracts and agreements, covering everything from simple undertakings and releases to complex contracts, development agreements and cost sharing agreements.

Finance & Taxation: We guide both municipalities and private sector clients through municipal finance and taxation matters, including development charges, infrastructure funding, property tax and collection, and assessment appeals.

Contacts



Tammy A. Evans
Partner, Real Estate Group
T 416.865.3411
tevans@airdberlis.com



Tom Halinski
Partner, Municipal, Land Use Planning & Development Group
T 416.865.7767
thalinski@airdberlis.com

vaughan
ECONOMIC DEVELOPMENT

Vaughan's Economic Development team is the go-to source for insight into Vaughan's economic community. Our award-winning team can provide support for your expansion or relocation within the city through:

- **END-TO-END CUSTOMIZED SITE SELECTION SUPPORT;**
- **CUSTOMIZED GUIDANCE AND RESEARCH;**
- **ECOSYSTEM CONNECTIONS;**
- **SUPPORT ACCESSING FUNDING PROGRAMS;**
- **AND ZONING, PLANNING, AND BY-LAW INFORMATION.**

Vaughan is Transformative, Ambitious, and Purpose-Driven.

TAP into Opportunity – TAP into Vaughan.

SILVER SPONSOR

vaughan

ECONOMIC DEVELOPMENT

2025 CANADA'S BEST LOCATIONS SITE SELECTION

Invest in Vaughan:

At the Heart of the Toronto Region

INVEST IN VAUGHAN.

INVEST WITH CONFIDENCE.

Named one of Canada's Best Locations to Invest, Vaughan is strategically located in the Greater Toronto Area with direct TTC subway access – **connected**, **investment-ready** and **positioned for growth**.

ABOUT US

The City of Vaughan's Economic Development department supports Vaughan's transformative, ambitious and purpose-driven economy to make Vaughan a place where entrepreneurship, business, tourism, and art can prosper and grow.

Our Economic Development team provides services to expand and support Vaughan's established, growing, and emerging business clusters. Our staff can provide your business with a suite of services that include:

Corporate Visits – Staff are available to visit your location or meet virtually to provide business advisory support, learn more about your business needs, and address challenges. This includes connecting you with funding and financing programs, partnership and business development opportunities, and advocacy and government relations toolkits.

Site Selection Assistance – Whether you're looking to expand or relocate in Vaughan, our team provides customized site location assistance. This service includes information about the community and relevant properties, vacant land opportunities, site visits, custom research, introductions to local businesses and business support organizations, and information on relevant government programs.

Data Analysis and Provision – We provide research and insights on national, provincial, regional, and local economic trends that matter to your business. Our business intelligence services include data analysis, market research, and tailored information to support operations, expansion planning, and workforce development.

YOU CAN IN VAUGHAN.

WE'RE INVESTING WITH YOU.

The City of Vaughan offers the ideal environment for businesses to thrive by removing barriers, streamlining processes, and making it easier for businesses to develop, expand, and succeed in the Greater Toronto Area.

Two new initiatives were recently launched to accelerate investment and build a more business-friendly city:

The Community and Economic Development Fund is investing $43 million over five years, offering targeted financial incentives to encourage new office space, non-residential uses, and innovative mobility solutions. Eligible applicants can access development charge deferrals, forgivable loans, and capital grants for projects in:

- Office spaces and co-working spaces
- Convention centres
- Grocery stores and food services
- Transportation management strategies
- Urban agriculture
- Creative industries
- Incubation, research and development

The Investment Concierge Program provides a white-glove service that streamlines the development and permitting processes for non-residential projects. With a dedicated concierge from the City's Economic Development team as your single point of contact, you gain direct access to the right experts, faster navigation of approvals, and tailored support that keeps your project moving efficiently—so you can focus on bringing your new or expanded facility to market with confidence.

Visit **vaughanbusiness.ca** to explore our full range of services and tools, including business directories, the Vacant Employment Land Directory, sector profiles, and key opportunity areas to support your growth in Vaughan.

Economic Development
City of Vaughan
2141 Major Mackenzie Dr.
Vaughan, ON, Canada L6A 1T1

T: 905-832-8526
E: ed@vaughan.ca
vaughanbusiness.ca

vaughan
ECONOMIC DEVELOPMENT

VanMar is a fully integrated development and construction company delivering innovative, high-performance housing across Ontario and British Columbia. Founded in 1973, we bring over 50 years of experience and a track record of delivering more than 14,000 residential units.

As both a developer and builder, VanMar offers in-house expertise in design, development, pre-construction, and construction management. We support projects from early feasibility and pro forma modeling through to occupancy and warranty, ensuring clarity, cost certainty, and long-term value. Our portfolio spans affordable and supportive housing, mid-rise and high-rise condominiums, seniors' communities, student housing, care facilities, stacked towns, and purpose-built rental. With a developer's mindset and a commitment to quality and performance, we partner with housing providers, municipalities, non-profits, and private developers to deliver housing solutions that strengthen communities.

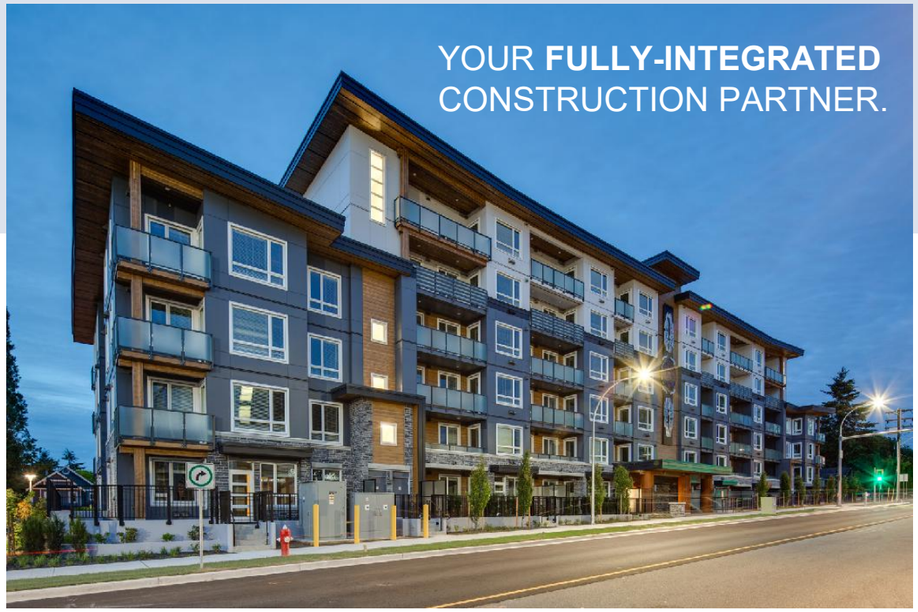
SILVER SPONSOR

VanMar CONSTRUCTORS ON INC.

Why **VanMar?**

In today's challenging housing environment, most construction managers simply price drawings and manage a tender. That's not us.

At VanMar Constructors, we bring much more to the table.
We are an integrated developer-builder with a track record of delivering over **14,000** residential units in the last 20 years across Ontario and British Columbia; including affordable and co-op housing, market rental, long-term care, and student housing projects. Our team is purpose-built to support housing providers with the real-world tools, insight, and ability needed to bring complex projects to life.



We're not just excellent builders; we help you **evaluate land, analyze feasibility, guide design, unlock value, and provide high-powered intel** so you can make informed development decisions. Whether you need a thoughtful development partner, a proven construction manager, or a team who can do both, VanMar is here to help.

This is why VanMar has created **FRAMEWORK**, our highly efficient, prefabricated wood structure construction system for multi-residential buildings.

FRAMEWORK
PREFABRICATED WOOD STRUCTURES

VanMar CONSTRUCTORS ON INC.

buildwithframework.ca

WHAT IS **FRAMEWORK**

FRAMEWORK is a highly efficient, prefabricated, panelized wood frame construction system for multi-residential buildings up to six stories. It delivers sustainable, high-quality, buildings that are renewable and significantly faster to build than any other construction methods. The FRAMEWORK methodology also provides the highest thermal performance and energy efficiency while being more cost-effective than mass timber, precast concrete, cast-in-place concrete, or any other built form on the market.

As a 'kit-of-parts,' this proprietary system, developed through a rigorous application of standards over years of experience, is now an easily repeatable system that can be configured to suit any geography, site, scale, and budget.







Benefits of **PREFABRICATION**

All suite walls, floors, deck assemblies are pre-fabricated and panelized off-site while sitework and foundations are underway. Exterior walls come complete with windows and SAM membranes installed. Using our BIM/Revit technology we also prefabricate components of the mechanical and electrical systems.

The intelligent modularity and repetition of the FRAMEWORK system means that our designs are faster to get projects to the construction stage. All units, assemblies, envelopes and typical details for FRAMEWORK are already standardized; therefore, projects can move quickly through the design and approvals process reducing the overall cost.



The FRAMEWORK system's flexible design ensures that multiple unit types and sizes fit into a typical building, while floors remain vertically aligned for structural, mechanical, and electrical system efficiency.

FRAMEWORK

BIM & VDC Authoring, Coordination, and Constructability

We use **Building Information Modeling (BIM)** and **Virtual Design & Construction (VDC)** as core delivery tools to improve speed, cost certainty, build quality, and repeatability across residential projects.

- VanMar's BIM and VDC workflows are centered around the Autodesk Suite of Software, specifically Revit and AutoCad as our primary software for model-based design coordination and construction execution.
- Revit enables the creation and management of coordinated building models that integrate architectural and structural information that aligns with fabrication and construction requirements.
- For wood-frame residential projects, we use StructSoft which supports detailed wood framing review and modeling, enabling constructability validation and improved coordination between framing, building envelope, and MEP systems.
- The use of BIM through software Revit and Navisworks also allows us to work with consultants, reviewing drawings as they are submitted at agreed milestones by creating overlays and clash reports of different disciplines. This allows us to mitigate risk and rework during construction.

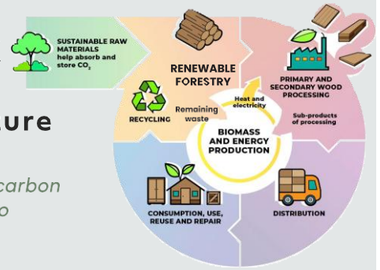


77
Wood frame projects completed across Canada

7,682
Mid-rise wood frame units built

150+
Projects constructed for government housing programs

FRAMEWORK is built for a low-carbon **future**



70-90% lower embodied carbon over 50 years compared to concrete or steel.

FRAMEWORK supports Canada's climate goals through reduced embodied carbon and operational energy use. Wood construction naturally stores carbon and requires less energy to produce than steel or concrete, giving every FRAMEWORK project a significant head start on sustainability.

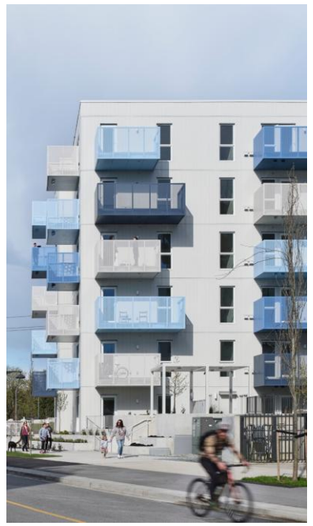
By using Canadian-made wood systems and efficient design strategies, FRAMEWORK delivers affordable housing that is zero-carbon ready, aligned with CMHC and national climate goals.

Due to the efficiency and standardization of the prefabrication process, construction materials are utilized more efficiently. As a result, construction costs are reduced, less material is needed, and there is less construction waste disposal.

The **sustainable** choice

- Meets all BCH Affordable Housing Fund requirements for energy efficiency
- Sustainable: up to 90% less GHG, up to 90% less embodied carbon
- Prefabricated panelized 2D modules with scalable and repeatable design
- Built from local Canadian softwood lumber
- Increases speed of construction by 30%

39
"Sustainable" housing projects completed



Locally Sourced Materials

*Proudly **Canadian**.*
*Purposefully **Local**.*

VanMar is committed to sourcing materials, especially softwood lumber, from Canadian manufacturers. By choosing Canadian-made products, we support local jobs, reduce supply chain risks and strengthen Canada's economy. VanMar's experience in residential construction and development ensures alignment of municipal, financial, and design priorities right from the start.

PROJECT HIGHLIGHT: MODA

Completed in 2024, Moda is a 6-storey soft wood condominium. With 15 suites per floor, Moda hosts 93 highly sought after units.

Moda Condos is conveniently situated in one of Waterloo's most desired districts, home to prestigious post-secondary institutions, a booming tech market, and highly connected to commuting options.

Moda showcases trendy exteriors, utilizing both siding and masonry. Residents enjoy stylish interiors and exclusive building amenities including a lounge, co-working spaces, bike storage and pet wash.

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LANDPRO CONFERENCE 2026

EDUCATION PARTNERS

02

EDUCATION PARTNERS

Association of Ontario Land Surveyors

Professional 2.5 hours & Formal 2.0 hours.

Ontario Professional Planners Institute

May claim hour units as per CPL handbook.

Law Society of Ontario

CPD Qualified Program. 1hr 15 mins Professionalism Hours. Substantive Hours are at the participant's discretion for 8 hour program.

Ontario Association of Architects

Eligible for 6 Structured Learning Hours

Appraisal Institute of Canada

Approved for 4 Credits.

The Canadian Society of Landscape Architects

Eligible for CPDs at the discretion of attendee to meet MCE requirements

LANDPRO CONFERENCE 2026

WELCOME & OPENING REMARKS

MASTER OF CEREMONIES

SARAH TURNEY

Partner, Fasken Martineau DuMoulin LLP.

03



MASTER OF CEREMONIES

SARAH TURNEY

Partner, Fasken Martineau DuMoulin LLP.

Sarah Turney is an advocate with extensive experience in real property, development and construction litigation. She works with clients to solve complex disputes arising from real property.

Sarah's litigation practice focuses on real property disputes. She advises clients on complex easement and title matters, boundary disputes, adverse possession claims, mortgage claims and commercial lease remedies. Sarah is recognized for her in-depth knowledge of real property and is able to provide efficient, strategic advice on a broad range of real property matters.

Sarah was recognized as a "Rising Star: Leading Lawyer under 40" by Lexpert in 2019. Winners of these highly competitive awards are selected by a distinguished advisory board. In selecting winners, the advisory board considers contributions to the firm, legal profession, and larger community.

Sarah's municipal and planning practice includes property tax assessment, zoning and other planning appeals and expropriation matters. Sarah advocates for clients before the Ontario Land Tribunal and the Assessment Review Board.

As a former program coordinator with the City of Ottawa, Sarah has experience with government relations and policy development at the municipal level.

LANDPRO CONFERENCE 2026

PRESENTATION

STATE OF THE UNION

DAVE WILKES

President & CEO, Building Industry and Land Development Association (BILD).

04



TOPIC: STATE OF THE UNION

DAVE WILKES

President & CEO, Building Industry and Land Development Association (BILD).

Dave Wilkes is a seasoned business leader with deep experience in developing collaborative solutions to industry challenges and opportunities. As President & CEO of BILD, he is a powerful advocate for land developers and home builders and a strategic partner to a wide variety of stakeholders and partner organizations. In 2022, Dave was a member of Ontario's Housing Affordability Task Force. With more than 1,300 member companies, BILD is the voice of the home building, land development and professional renovation industry in the Greater Toronto Area. The building and renovation industry provides more than 231,000 jobs in the region and $26.9 billion in investment value. BILD is aliated with the Ontario and Canadian Home Builders' Associations.

BILD Presentation to:
LANDPRO

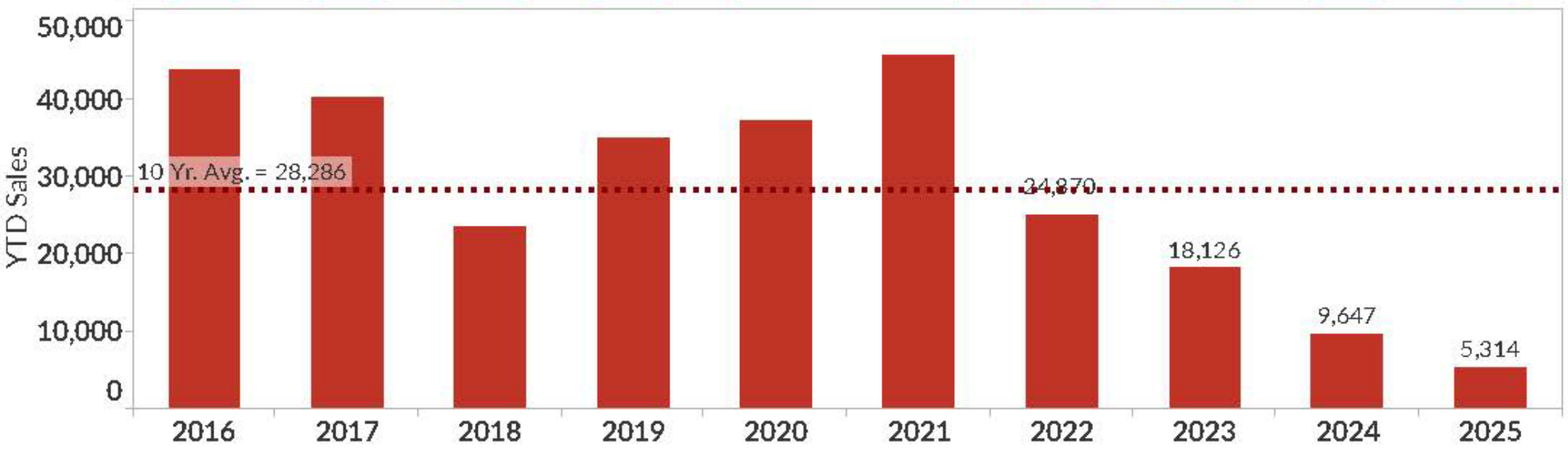


Winston Churchill



"Never let a good crisis go to waste"

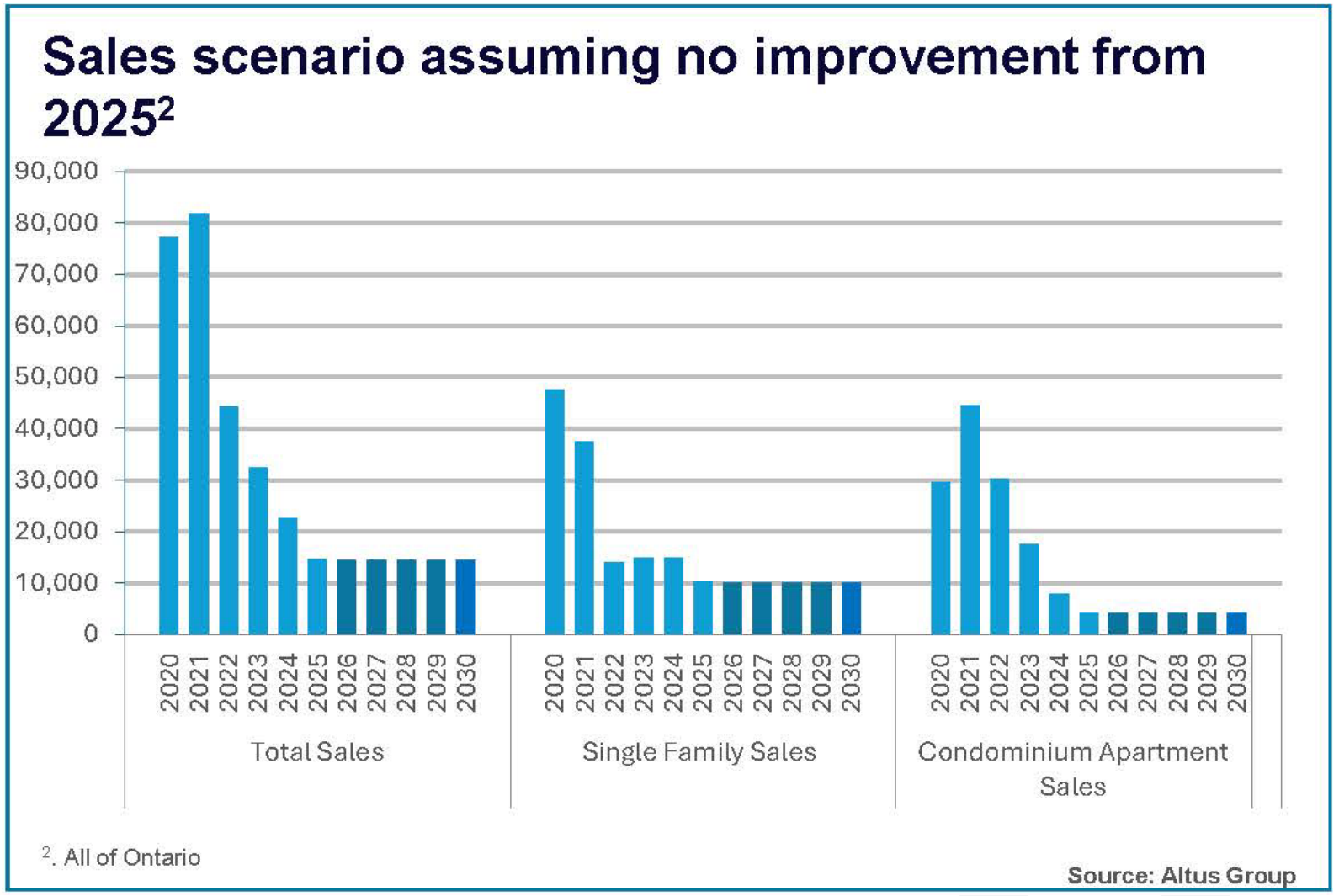
Worst Sales Environment on Record (GTA)



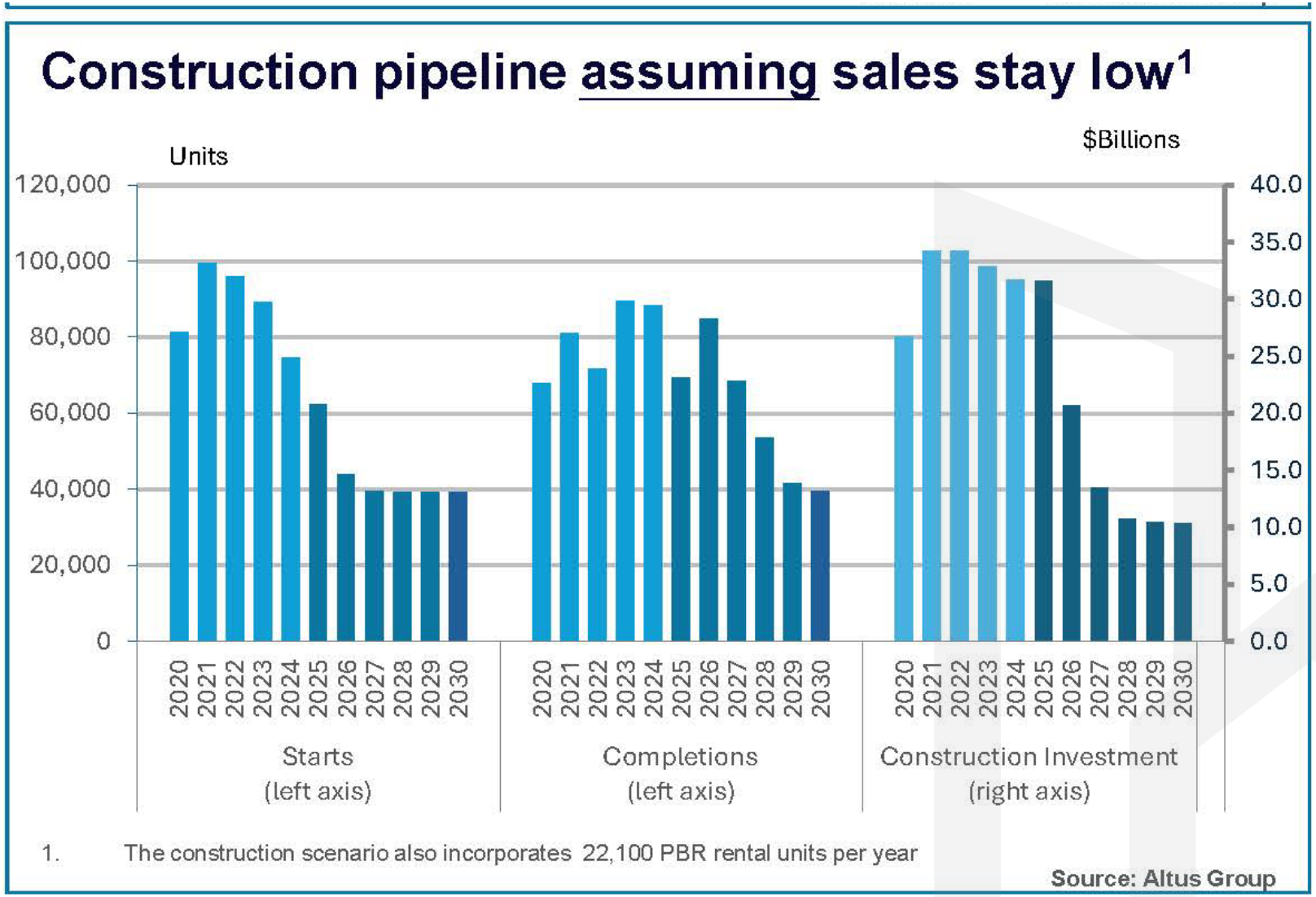
Other Canadian Markets Following

	2024	2025	Avg 2016-2025	% Change 2025 vs 2024	% Change 2025 vs Avg 2016-2025
GTA					
Single-family	5,146	3,247	8,741	-37%	-63%
Condominium Apartment	4,501	2,067	19,545	-54%	-89%
Total	9,647	5,314	28,286	-45%	-81%
GGH (excluding GTA)					
Single-family	3,347	1,762	6,467	-47%	-73%
Condominium Apartment	1,237	445	3,174	-64%	-86%
Total	4,584	2,207	9,640	-52%	-77%
Vancouver					
Single-family	1,761	1,337	3,084	-24%	-57%
Condominium Apartment	7,738	2,881	10,955	-63%	-74%
Total	9,499	4,218	14,039	-56%	-70%
Calgary					
Townhouse	1,324	1,099	1,459	-17%	-25%
Apartment	2,015	938	2,038	-53%	-54%
Total	3,339	2,037	3,498	-39%	-42%
Edmonton					
Townhouse	693	575	750	-17%	-23%
Apartment	159	137	430	-14%	-68%
Total	852	712	1,180	-16%	-40%
Montreal*					
Apartment	972	900	3,035	-7%	-70%

Forward Looking Ontario - No Structural/Consumer Change



Ontario Prognosis for Starts Grim



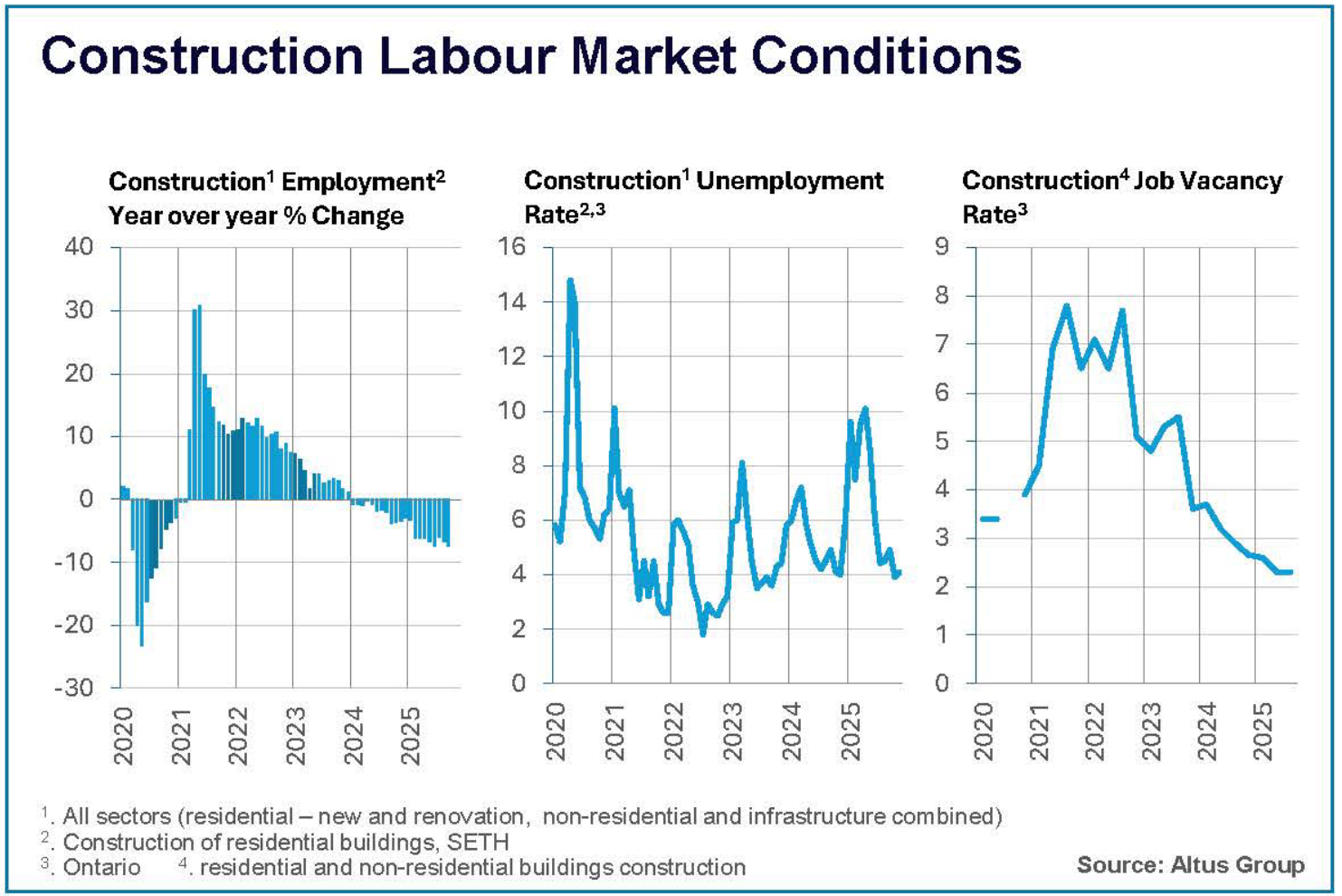
Ontario Viability Challenge

TORONTO		
Project Cost Reductions PSF/NSA to Offset $400psf (28.5%) Sale Price Reduction (Toronto Average 650sf Suite x $400psf reduction = $260,000)		
$1,400 psf $910,000	**$1,000 psf**	**$650,000**
	$/PSF NSA	$/UNIT (650SF)
1. Land	$75 psf	$48,750
2. Parkland & CBC	$11 psf	$6,825
3. Construction Costs	$60 psf	$39,000
4. Interest Rate Reduction from Peak	$30 psf	$19,500
5. Interest Rates - DC Payment Deferral	$20 psf	$13,000
6. Sales Commissions	$20 psf	$13,000
7. HST - First Time Home Buyers (±10%)	$8 psf	$5,200
8. HST - Extend to All Buyers	N/A	$0
9. HST - Both $ Payable & % HST reduces as Sales Price Reduces	$46 psf	$29,900
10. Development Charges	N/A	$0
TOTAL COST REDUCTION ACHIEVED	**$270 psf**	**$175,175 ***
TOTAL REDUCTION REQUIRED	**$400 psf**	**$260,000**
SHORTFALL STILL TO ACHIEVE	**$130 psf**	**$84,825**

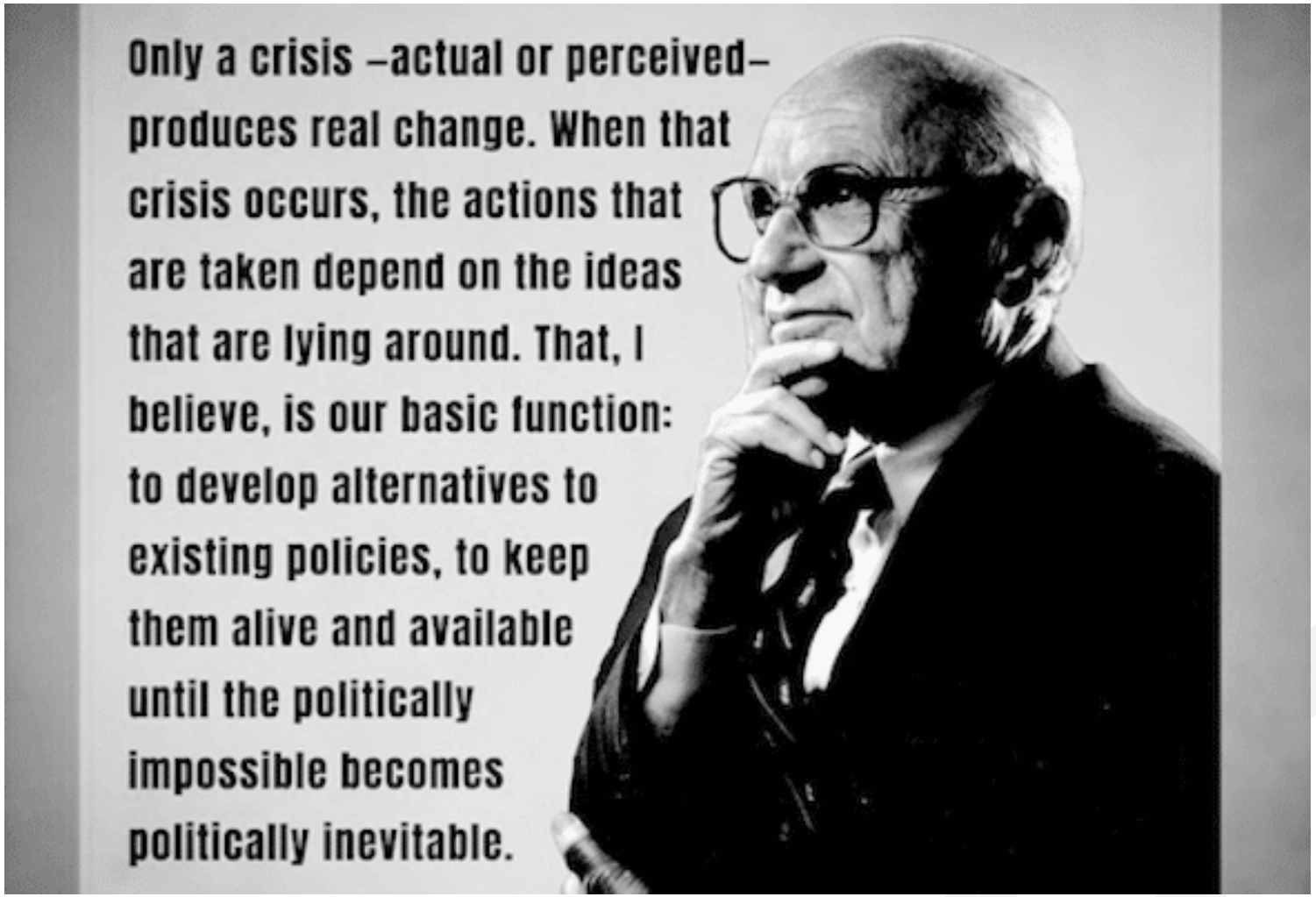
Viability Delta

Brampton	$79,540.00	(15%)
Hamilton	$74,550.00	(15%)
Oshawa	$44,200.00	(11%)
Milton	$85,650.00	(17%)

100,000 Ontario Construction (Related) Jobs at Risk



Milton Friedman



NEWS RELEASE

Ontario Expanding HST Rebate to Lower the Cost of New Homes in Partnership with the Federal Government

Proposal would save homebuyers up to $130,000, spurring new home construction and keeping costs down for families

March 25, 2026

Office of the Premier

Finance

NEWS RELEASE

Ontario and Canada Sign Historic Partnership to Build Homes, Transit and Communities

Agreement includes $8.8 billion to support housing by lowering development charges and support for major transit projects, including Waterfront East Transit and GO 2.0

March 30, 2026

Office of the Premier

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1. Content
2. Quick Facts
3. Additional Resources
4. Related Topics

Spring Housing Legislation

NEWS RELEASE

Ontario Introducing Legislation to Improve Transit and Build More Homes

Proposed measures will help fight gridlock and reduce barriers to home building

March 30, 2026

Municipal Affairs and Housing

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1. Content
2. Quick Facts
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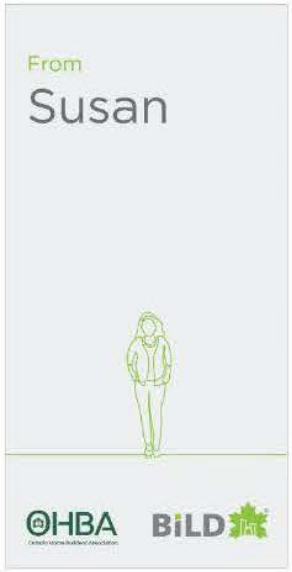
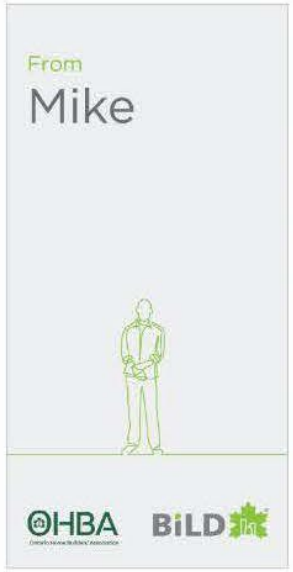
Starts Prognosis (Ontario) w/ Stimulus + DC/HST

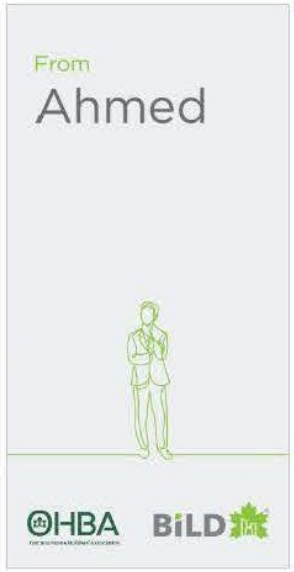
22,500 PBR	+	17,500 Sale Units (All Types)	+	18,000 – 23,000 Sale Units (All Types) Stimulus*	=	58,000-63,000 per year

*Supports 51,000 Construction Sector and Related Jobs

Now is a Great Time to Buy A New Home

















BILD

PRESENTATION

STATE OF THE PLANNING REALM

KATARZYNA SLIWA

Partner, Canada Region Board Member,
Dentons Canada LLP.

MAX REEDIJK

Senior Associate, Dentons Canada LLP.

05



TOPIC: STATE OF THE PLANNING REALM

KATARZYNA SLIWA

Partner, Canada Region Board Member,
Dentons Canada LLP.

A partner at Dentons, Katarzyna (Kat) Sliwa (She/Her/Hers) manages the Municipal Planning, Land Use and Development Law group. She is also a member of the Dentons Canada Region Board, the co-leader of the National Real Estate practice group, leader of the Canadian Smart Cities Thinktank and co-chair of the Global Smart Cities Thinktank. She provides exceptional counsel to landowners as they weave through the approval process for development and redevelopment projects, and strategically guides clients in resolving complex land use challenges throughout Ontario.

Kat's diverse client base includes various landowners, such as development companies, builders, landowner groups, institutions, commercial and retail users, cannabis industry, restaurants and hotels. Her vast experience extends to a wide spectrum of development matters, including official plan and zoning by-law amendments, plans of subdivision, severance, variance and site plan matters.

A savvy negotiator with a stellar reputation in the municipal and land use planning community, Kat is accomplished in taking clients from the beginning of the development proposal to approval, and in negotiating development agreements. She frequently appears before the Ontario Land Tribunal ("OLT", formerly the Ontario Municipal Board and Local Planning Appeal Tribunal), as well as municipal councils and committees.

Kat is recognized by The Best Lawyers in Canada, Legal 500 Canada, Chambers Canada and The Canadian Legal Lexpert Directory. She has also been named a Women's Leadership Initiative Champion by the Urban Land Institute (ULI) and has received the yBILD Leadership Award from the Building Industry and Land Development Association (BILD). Kat is also a past chair of the Ontario Bar Association's Municipal Law Executive.



TOPIC: STATE OF THE PLANNING REALM

MAX REEDIJK

Senior Associate, Dentons Canada LLP.

Max Reedijk is a senior associate in the municipal, land use planning and development law group at Dentons. He has a broad range of experience in land use planning and development and has advised landowners and developers on a wide spectrum of issues relating to the use, development and redevelopment of land.

Max also has an extensive background in construction and infrastructure law, expropriation and general commercial litigation. He has advised or assisted in providing advice to private owners, developers and government agencies with respect to high-profile infrastructure and light rail transit projects, multi-residential and mixed use developments, public procurement issues, and complex expropriation claims.

Max has appeared as counsel and successfully argued matters before the Superior Court of Justice and the Divisional Court. He has also appeared as co-counsel before the Ontario Land Tribunal (formerly the Local Planning Appeal Tribunal), the Toronto Local Appeal Body, the Commercial List, the Ontario Court of Appeal and the Federal Court of Appeal, and has drafted written materials for the Supreme Court of Canada.

DENTONS

State of the Planning Realm:

Planning Update

with Kat Sliwa, Partner and Max Reedijk, Senior Associate

LANDPRO 2026

April 1, 2026

Welcome to the Planning Update



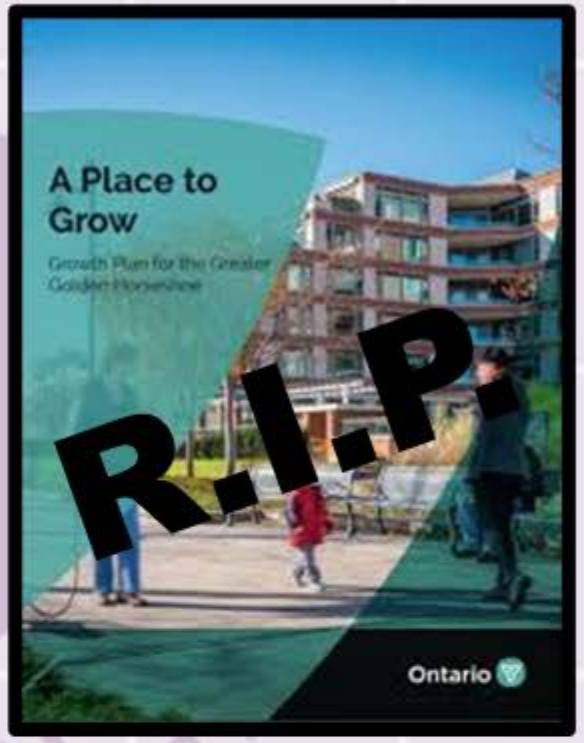
1. Policy/Legislative Reform: sweeping amendments to Planning and Development Charges legislation, policies, appeal rights, environmental matters, and powers
2. Provincial Priorities: Increasing housing supply, cutting costs, cutting red tape, centralizing planning authority, finding new ways to fit "More Homes" into the titles of legislation
3. Featuring: The *More Homes More Choice Act, 2019*, *More Homes for Everyone Act, 2022*, *More Homes Built Faster Act, 2022* and *Cutting Red Tape to Build More Homes Act, 2024*, *Fighting Delays, Building Faster Act, 2025*, and more

DENTONS

Policy Reform: Two Birds, One Statement

Provincial Planning Statement, 2024

1. Consolidated the Provincial Policy Statement and the Growth Plan
2. Removed Growth Plan population targets
3. Narrowed the definition of "Employment Area" to exclude institutional, stand-alone commercial and other uses
4. Eliminated Municipal Comprehensive Reviews
5. Lifted restrictions on Settlement Area Boundary Expansions and Employment Area Conversions



DENTONS

Streamlining Applications: Running Interference



Limiting third-party involvement, shortening timelines, standardizing application requirements

1. Shortened decision timelines
2. Introduced and eliminated fee refunds
3. Eliminated mandatory pre-application consultation
4. Limited third-party appeals
5. Permitted appeals of complete application requirements at any time
6. Simplified complete application requirements

DENTONS

Getting to the Bottom Line:



1. Multiple revisions to the Development Charges framework, including deferrals and exemptions
2. HST relief
3. Municipal initiatives to freeze Development Charges (e.g. Burlington, Mississauga, who is brave enough to go next…)
4. Community Benefits Charges update

DENTONS

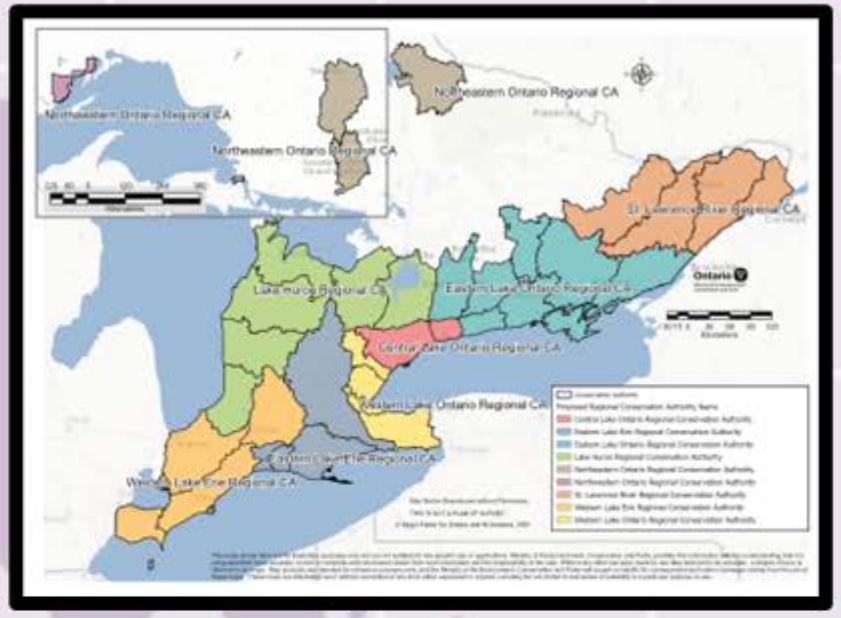
Centralization of Powers: It's the Minister's World



1. Role of MMAH
2. Use of Minister's Zoning Orders
3. PPS no longer applicable to Minister's decisions
4. Standardizing Official Plans
5. Province-wide system for tracking development applications

DENTONS

Reducing Red Tape:

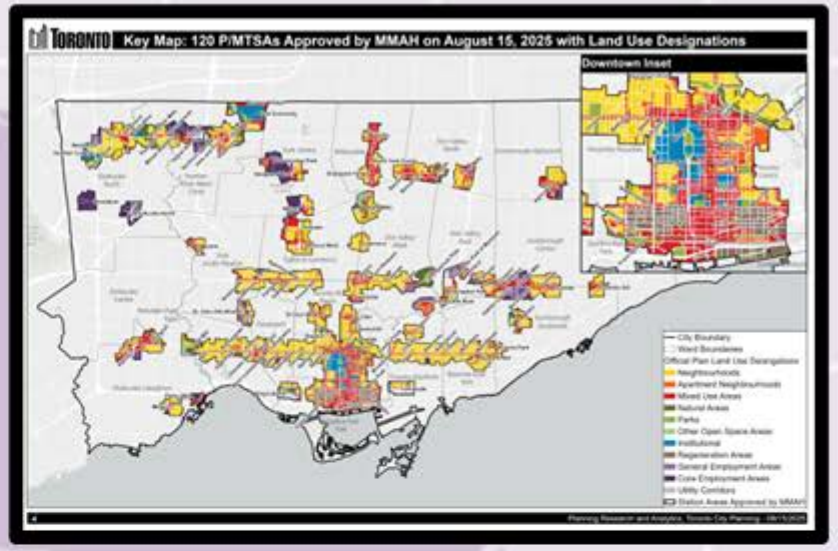


1. Strong Mayor Powers and a province-wide code of conduct
2. Removal of planning responsibilities for upper-tier Municipalities
3. Conservation Authorities – 36 amalgamated into 9, coordinated by the new Ontario Provincial Conservation Agency

DENTONS

More ...

1. Inclusionary Zoning
2. Protected Major Transit Station Areas and Major Transit Station Areas
3. Temporary suspension on Inclusionary Zoning in Toronto, Mississauga and Kitchener
4. Permitted additional dwelling units as-of-right
5. *Building Code Act* amendments and "The Code is King"



DENTONS

The Tea Leaves

1. Trends: Goal to increase the housing supply by making it easier and faster to build
2. Strategies: deregulation, centralization of authority, financial incentives, cutting red tape
3. Cost: local discretion, community participation, environmental matters, regional planning objectives
4. Course Correction: sweeping reforms and reversing decisions



DENTONS

Practical Implications: Seize the Day



1. Greater uncertainty and greater opportunity

   a) Opportunities for private settlement area boundary expansions; beware of servicing related constraints

      Aragon (Hockley) Development (Ontario) Corporation v Mono (Town) (2024 CanLII 16985)

   b) Opportunities for expedited approvals

   c) Opportunities for financial incentives to build now

2. Need to strategically navigate evolving appeals landscape; be aware of judicial review

      2701836 Ontario Inc. v Haldimand County (2026 ONSC 805)

      NOVA Chemicals Corp. v Dow Chemical Canada ULC (2025 ONSC 4334)

3. Monitor future provincial intervention in favour of housing needs and goals

DENTONS

Thank you!

For more information, contact Kat Sliwa (kat.sliwa@dentons.com) or Max Reedijk (max.reedijk@dentons.com)

Dentons Insights www.dentons.com/en/kat-sliwa

March 12, 2026: More changes to Ontario's Conservation Authorities Act

November 4, 2025: Ontario's proposed Fighting Delays, Building Faster Act, 2025 (Bill 60) and what it means for the development process

May 21, 2025: Spring brings more changes: Ontario announces the 2025 budget, and Bills 2, 5 and 17 to cut red tape, speed up home construction and protect the economy

October 23, 2024: Streamlining development and intensification: Guide to the new Provincial Planning Statement

And many more…

DENTONS

2024 CarswellOnt 3050
Ontario Land Tribunal

Aragon (Hockley) Development (Ontario) Corporation v. Mono (Town)

2024 CarswellOnt 3050, 2024 CanLII 16985

PROCEEDING COMMENCED UNDER subsection 22(7) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Aragon (Hockley) Development (Ontario) Corporation

Subject: Request to amend the Official Plan - Failure to adopt the requested amendment

Description: To permit the development of 220, three-storey townhouse units

Reference Number: OPA 2022-02

Property Address: Block 2 and 28 of Registered Plan 7M-41 and Part 7 of Lot 5, Concession 2 of Reference Plan 7R5452

Municipality/UT: Mono/Dufferin

OLT Case No.: OLT-23-000641

OLT Lead Case No.: OLT-23-000641

OLT Case Name: Aragon (Hockley) Development (Ontario) Corporation v. Mono (Town)

PROCEEDING COMMENCED UNDER subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Aragon (Hockley) Development (Ontario) Corporation

Subject: Application to amend the Zoning By-law - Refusal or neglect to make a decision

Description: To permit the development of 220, three-storey townhouse units

Reference Number: ZBA 2022-02

Property Address: Block 2 and 28 of Registered Plan 7M-41 and Part 7 of Lot 5, Concession 2 of Reference Plan 7R5452

Municipality/UT: Mono/Dufferin

OLT Case No.: OLT-23-000642

OLT Lead Case No.: OLT-23-000641

PROCEEDING COMMENCED UNDER subsection 19(1) of the Ontario Land Tribunal Act, 2021, S.O. 2021, c. 4, Sched. 6

Request by: Town of Mono

Request for: Request for Dismissal Without a Hearing

K.R. Andrews Member, J. Innis Member

Heard: January 25, 2024

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2024 CarswellOnt 3050, 2024 CanLII 16985

Judgment: February 29, 2024
Docket: OLT-23-000641

Counsel: Kristi Ross, for Aragon (Hockley) Development (Ontario) Corporation
Stan Floras, for Town of Mono

Subject: Municipal; Public
Headnote
Municipal law
Table of Authorities
Statutes considered:
Ontario Land Tribunal Act, 2021, S.O. 2021, c. 4, Sched. 6
s. 9

s. 19(1)(c)
Planning Act, R.S.O. 1990, c. P.13
s. 17(45)

s. 17(45.1) [en. 2006, c. 23, s. 9(11)]

s. 34(25)

s. 34(25.1.1) [en. 2006, c. 23, s. 15(16)]
Rules considered:
Ontario Land Tribunal Rules of Practice and Procedure, O.L.T. Rules
R. 15.4

***K.R. Andrews Member, J. Innis Member*:**

DECISION DELIVERED BY K.R. ANDREWS AND J. INNIS AND ORDER OF THE TRIBUNAL

INTRODUCTION

1 This is a motion by the Town to dismiss the appeals without a hearing pursuant to sections 17(45) and 34(25) of the *Planning Act*, section 19(1)(c) of the *Ontario Land Tribunal Act* ("OLT Act"), and/or under Rule 15.4 of the Tribunal *Rules of Practice and Procedure* (the "Rules"). The Town contends that the motion should be granted due to the Appellant having no reasonable prospect of success and, consequently, it would be an inefficient use of resources for the matter to proceed to a full hearing.

2 The Notice of Motion also includes a request for an order to adjourn the hearing indefinitely as alternative relief; however, both parties indicated at the hearing that neither of them is in favour of such relief. Given their common position, and the Tribunal's mutual preference to not have the proceedings linger indefinitely, the Tribunal will not consider an indefinite adjournment as a potential outcome.

3 As a matter of background, the subject applications seek a Zoning By-law Amendment ("ZBA"; see proposed draft at *Attachment 1*) and Official Plan Amendment ("OPA"; see proposed draft at *Attachment 2)* to facilitate the development of the Subject Lands (legally described as Block 2 and 28 of Registered Plan 7M-41 and Part 7 of Lot 5, Concession 2 of Reference Plan 7R5452). The proposed development involves a planned residential condominium community comprised of 220 townhouse units.

4 Of particular note, the Appellant proposes to service the proposed development by way of a "communal wastewater treatment system", because the planned density will not enable the implementation of individual private services and there are no municipal wastewater services otherwise available. The proposed built-form and density (which necessitates the proposed

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communal wastewater treatment system) is referenced in the Appellant's draft ZBA, and the proposed built-form, density and communal wastewater treatment system are all specifically identified in the Appellant's draft OPA.

5 The Tribunal finds that the need for a communal wastewater treatment system, as part of the proposed development, is a key factor to determining this motion. This is because the construction of such a system requires the Town to enter into a Municipal Responsibility Agreement ("MRA") [1] with the Appellant, and the Town has unequivocally stated that it will refuse to do so. This fact, the Tribunal finds, will effectively prevent the Appellant from proceeding with their development as proposed, because they will be unable to obtain the necessary authorization from the Ministry of Environment Conservation and Parks ("Ministry") to build the communal system without an MRA.

6 It is on this basis that the Town brings this motion to dismiss for there being no reasonable prospect of success.

STATUTORY PROVISIONS, RULES FOR DISMISSAL AND ANALYSIS

7 The Tribunal has reviewed the statutory provisions and Rules for dismissal of a matter without a hearing and finds that sections 17(45) and 34(25) of the *Planning Act* do not apply, given that the subject appeals clearly identify legitimate land use planning grounds and there is no indication of bad faith or other conduct otherwise contemplated by these sections.

8 Furthermore, the Tribunal finds that none of the factors identified at Rule 15.4 of the Rules are present in this case, given that the Appellant is not taking the position that the Tribunal has the jurisdiction to force the Town to enter into an MRA, which the Tribunal clearly has no jurisdiction to do. The Tribunal finds that an MRA is a legal contract between two parties, and the Tribunal has no power to compel the Town to enter into it. The Tribunal also finds that, to do so, it would involve interfering with the Town's discretionary powers to conduct its affairs, particularly affairs with potential financial consequences, in a manner that it sees fit.

9 Consequently, the Tribunal finds that this motion rests with an analysis under section 19(1)(c) of the OLT Act, which states:

> [T]he Tribunal may, on the motion of any party or on its own initiative, dismiss a proceeding without a hearing [...] if the Tribunal is of the opinion that the proceeding has no reasonable prospect of success;

10 As it relates to this section, there was some discussion between the Parties and the Tribunal about whether "reasonable prospect of success" is the same as "reasonable prosect of proceeding [with the development]". This distinction arises given that the requested ZBA and OPA do not directly require the Town to execute an MRA for it to be approved, but the Appellant nevertheless cannot proceed with construction without it.

11 On this point, the Appellant clearly takes the position that it would be satisfied with the approval of the requested ZBA and OPA and accept the obvious risk of not being able to proceed with construction. The Town, meanwhile, wants no part of such an outcome, expressing concern that approval of the requested OPA and ZBA with reference to a communal wastewater treatment system would seemingly condone the implementation of such a system and, by extension, infer an agreement to executing a MRA. The Tribunal must therefore determine if it should allow the matter to proceed to a merit hearing, to provide the Appellant with an opportunity to present its planning submissions, despite the likelihood that construction cannot proceed regardless of any approval of the subject OPA and ZBA.

12 In contemplation of the intent and purpose of section 19(1)(c) of the OLT Act, the Tribunal finds no practical difference between "reasonable prospect of success" and "reasonable prospect of proceeding [with the development]" in the present case. Put another way, the Tribunal sees no point in considering approval of an OPA or ZBA if the purpose is unattainable, such as it is in the present case.

13 Additionally, in the present circumstances, the Appellant is expressly seeking an OPA which specifically includes reference to a "Communal Wastewater Treatment System" within its very language, and both the proposed ZBA and the OPA include built-form and density details which are only possible if a Communal Wastewater Treatment System is constructed. Given such language within the proposed instruments, the Tribunal sees no way to consider other planning grounds apart from

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the plausibility of constructing a Communal Wastewater Treatment System. In this sense, the plausibility of constructing a Communal Wastewater Treatment System becomes the matter's threshold question.

14 Both Parties provided the Tribunal with extensive submissions and a variety of cases which purport to support their respective positions. The Tribunal confirms that it has considered these cases, noting that none of them are necessarily binding. Furthermore, while the parties' submissions were extensive, the Tribunal finds that the analysis is relatively straight forward, determined by the simple question: does the appellant have a reasonable prospect of success, given the scope of the proposed OPA and ZBA and the fact that the Town has already determined that it will not execute the required MRA?

15 The Tribunal finds the answer to be unequivocally "no".

16 The Appellant takes the position that the merits of the OPA and ZBA, as currently proposed, should still be considered by the Tribunal, even though the current decision of the Town will inevitably halt construction, because (they submit) it is theoretically possible for the Town to change its decision, or the requirements of the Ministry may change.

17 While such theoretical possibilities may exist, the Tribunal received no evidence that the Town is likely to change its mind. On the contrary, the Town has made it clear that it is determined to continue to refuse the execution of an MRA. The Tribunal also does not accept that it is likely that the Ministry requirements will change, given that the current requirements, including the need to have an executed MRA with the local municipality, have been around for many years.

18 Upon these findings, the Tribunal concludes that the Appellant has no reasonable prospect of obtaining an executed MRA with the Town, and therefore it has no reasonable prospect for success as it relates to its ZBA and OPA applications. As a result, the Tribunal finds, it would be an inefficient use of the collective resources of the parties and the Tribunal to allow the matter, as currently proposed, to proceed to a merit hearing.

ALTERNATIVE RELIEF CONSIDERED

19 As stated in the Notice of Motion, the Town is seeking an order to dismiss the appeals without a hearing. However, at the hearing of the motion, the Town confirmed that it recognizes that the Tribunal may also provide alternative relief pursuant to section 9 of the OLT Act, including the possibility of providing directions to the Appellant to modify its ZBA and OPA applications to address any particular findings of the Tribunal. Counsel for the Appellant further acknowledged that the Tribunal has such powers, and also expressed a desire to have such alternative relief considered in the event that the Tribunal finds that their applications, as proposed, have no reasonable prospect for success.

20 The Tribunal confirms that it may order such alternative relief under the broad powers provided pursuant to section 9 of the OLT Act. However, in the present case, the Tribunal finds that the necessary changes to the proposed OPA and ZBA, to cure the applications upon the Tribunal's findings, will be too substantial to be considered by the Tribunal without first being considered by the Municipality.

21 In this sense, the Tribunal finds that such a substantially different application should first go before the Municipal Council and proceed through the regular Municipal steps before potentially coming to the Tribunal for determination. This finding is informed, at least in part, by the language of ss. 17(45.1) and 34(25.1.1) of the *Planning Act*, which provides the Tribunal with the authority to "dismiss all or part of an appeal without holding a hearing if, in the Tribunal's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision".

ORDER

22 *THE TRIBUNAL ORDERS* that the motion is granted, and the appeals are dismissed.

Attachment1

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THE CORPORATION OF THE TOWN OF MONO

BYLAW NUMBER 2022 - XX

BEING A BYLAW TO AMEND COMPREHENSIVE ZONING BYLAW 78-1, AS AMENDED

WHEREAS the Council of the Corporation of the Town of Mono deems it expedient to amend Bylaw No. 78-1, as amended;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MONO ENACTS AS FOLLOWS:

1. THAT the Town of Mono Comprehensive Zoning By-law 78-1, as amended, is hereby further amended by rezoning the subject lands identified as Block 2 and 28 of Registered Plan 7M-41, and shown on Schedule "A", from Highway Commercial - 4 to Suburban Residential- XX.

2. THAT notwithstanding the provisions in Section 7, the following provisions shall apply to the lands identified on Schedule "A" zoned RU-XX:

    a. The lands shall be considered one lot for the purpose of applying the RU-XX zoning regulations.
    b. The following uses shall be permitted on all lands zoned RU-XX:
        i. Uses as provided in Section 7(1) of the RU Zone
        ii. Townhouse Dwellings
    c. Front Yard Depth (minimum): 6 metres
    d. Exterior Side Yard Width (minimum): 35.24 metres from Highway 10
    e. Interior Side Yard Width (minimum): 15.14 metres from Kingfisher Drive
    f. Rear Yard Depth (minimum): 7.62 metres
    g. Landscaped Open Space (minimum): 26.03 %
    h. Lot Coverage (maximum): 14.86 %
    i. Height of Building (maximum): 10.28 metres
    j. Maximum number of dwelling units: 220
    k. The following provisions shall apply to townhouse dwellings as permitted in the RU-XX zone:
        i. Minimum separation between any townhouse dwelling blocks: 3.05 metres
        ii. No more than 6 townhouse dwellings shall be located in any block

3. THAT notwithstanding Section 5(14)(b), the minimum required parking spaces per townhouse dwelling shall be: 2 spaces per dwelling.

4. THAT a new definition for townhouse dwelling be added to Section 4(22) as follows:

    "DWELLING, TOWNHOUSE" means a building divided vertically or horizontally into three or more separate dwelling units, each of which has an independent entrance either directly or through a common vestibule.

DRAFT

Graphic 1

5. THAT Schedule "A" attached hereto delineates the lands to be rezoned RU-XX Zone;

6. AND THAT this Bylaw shall come into force and effect pursuant to Section 34(21) of the Planning Act R.S.O. 1990.



Graphic 2

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READ A FIRST AND SECOND TIME THIS DAY OF 2022.

READ A THIRD TIME AND PASSED THIS DAY OF 2022.

_____

MAYOR

_____

CAO/CLERK

DRAFT

Graphic 3

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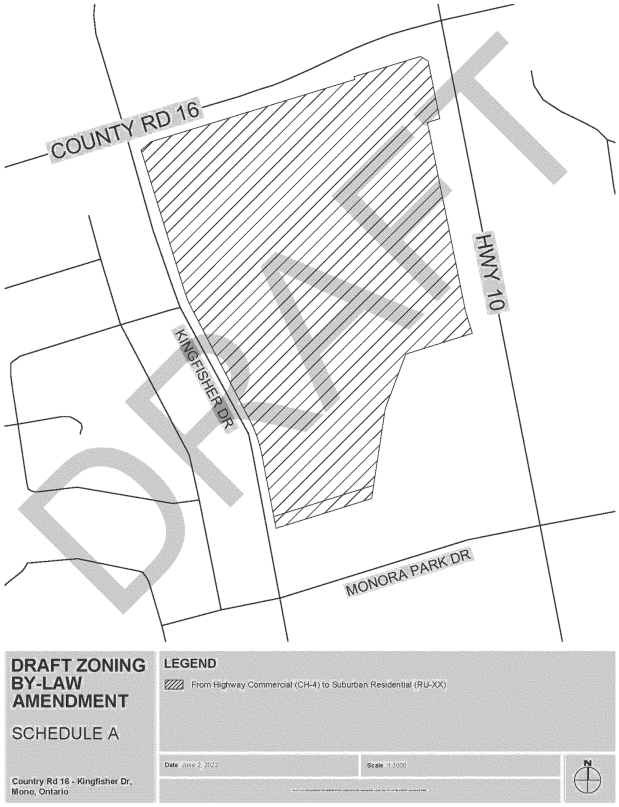

Graphic 4

Attachment2

AMENDMENT NO. XXX TO THE TOWN OF MONO OFFICIAL PLAN

CONSTITUTIONAL STATEMENT

The details of the Amendment, as contained in Part B of this text, constitute Amendment No. XXX to the Town of Mono Official Plan.

PART A – PREAMBLE

1. PURPOSE OF THIS AMENDMENT

The purpose of this Amendment is to redesignate a portion of the lands located at the southwest corner of Highway 10 and County Road 16 from *Special Highway Commercial* to *Suburban* with a special provision that permits townhouse residential units on a communal wastewater treatment system and maintains the *Special Highway Commercial* designation on the south part of the lands as shown on Schedule X to the Amendment.

2. SITE AND LOCATION

The site is comprised of three contiguous parcels identified as Block 2 and 28 of Registered Plan 7M-41 and Part 7 of Lot 5, Concession 2 of Reference Plan 7R5452. The site is approximately 10.6 hectares in area and bound by Highway 10 to the east, Kingfisher Drive to the west, County Road 16 to the north and Monora Park Drive to the south.

3. BASIS FOR THE AMENDMENT

a. The proposed Amendment provides for much needed new housing in a compact, attainable form in the Town and reflects appropriate intensification with the Town's existing Settlement Area.
b. The proposed Amendment maintains commercial uses on the site.
c. The proposed Amendment is consistent with the Provincial Policy Statement (PPS) and conforms to the Growth Plan for the Greater Golden Horseshoe (Growth Plan).
d. The proposed Amendment conforms to the Dufferin County Official Plan.
e. The proposal represents a compatible development of the lands within the surrounding context.

PART B – THE AMENDMENT

1. DETAILS OF THE AMENDMENT

The text of the Official Plan is amended by adding a site specific exception to Section 6 as follows:

(6) Special Provision - EAST HALF OF LOT 5, CONCESSION 2 WHS

Notwithstanding any other policies under Section 6, the lands identified as Block 2 and 28 of Registered Plan 7M-41, shall permit a maximum of 220 townhouse units on a communal wastewater treatment system, exclusive of the lands identified as Part 7 of Lot 5, Concession 2 of Reference Plan 7R5452, which shall remain designated as *Special Highway Commercial*. The townhouse development shall be subject to Site Plan Approval from the Town of Mono. In the implementing Zoning By-law, the lands will be zoned accordingly.

Graphic 5

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2. INTERPRETATION

The Official Plan Amendment shall be interpreted in accordance with the "Interpretation" policies of Section 3 of the Town of Mono Official Plan.

3. IMPLEMENTATION

The Official Plan Amendment will be implemented in accordance with the "Implementation" policies of Section 25 of the Town of Mono Official Plan.



Graphic 6

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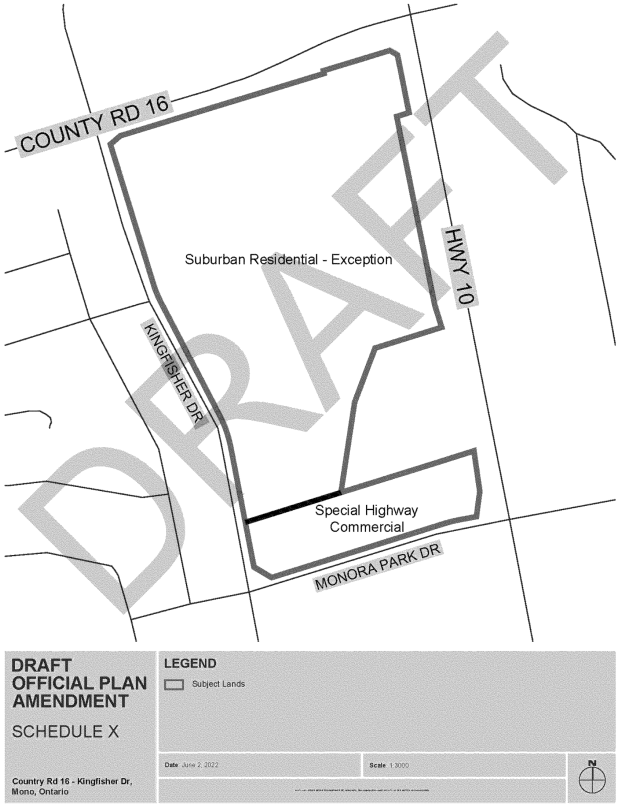

Graphic 7

Footnotes

1 A MRA is a legal agreement between the municipality and a developer that imposes the responsibility and obligations on the municipality for the proper management and function of the communal system and it specifically recognizes the contingency of the municipality assuming the system to repair and/or remedy any deficiency and to operate and maintain the system.

End of Document

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LANDPRO CONFERENCE 2026

KEYNOTE PRESENTATION

STATE OF THE WORLD ECONOMY

BENJAMIN TAL

Managing Director and Deputy Chief Economist, CIBC Capital Markets Inc.

06

KEYNOTE PRESENTATION



TOPIC: STATE OF THE WORLD ECONOMY

BENJAMIN TAL

Managing Director and Deputy Chief Economist,
CIBC Capital Markets Inc.

Benjamin is a member of the CIBC economic team that is responsible for analyzing macro economic developments and their implications for fixed income, equity, foreign exchange and commodities markets. He also acts in an advisory capacity to bank officers on issues related to wealth management, household credit and risk, and corporate credit and risk.

Well-known for his ground-breaking published research on topics such as labour market dynamics, real estate, credit markets, international trade and business economic conditions, Benjamin not only contributes to the conversation but also frequently sets the agenda.

Benjamin has close to 20 years of experience in the private sector advising clients, industry leaders, corporate boards, trade associations and governments on economic and financial issues. He is also a regular commentator in the media.

Benjamin is a member of the Economic Committee of The Canadian Chamber of Commerce and the Economic Development Committee of the Toronto Board of Trade. He is also a board member for the Governors of Junior Achievement of Central Ontario and Toronto Financial International.



Benjamin Tal

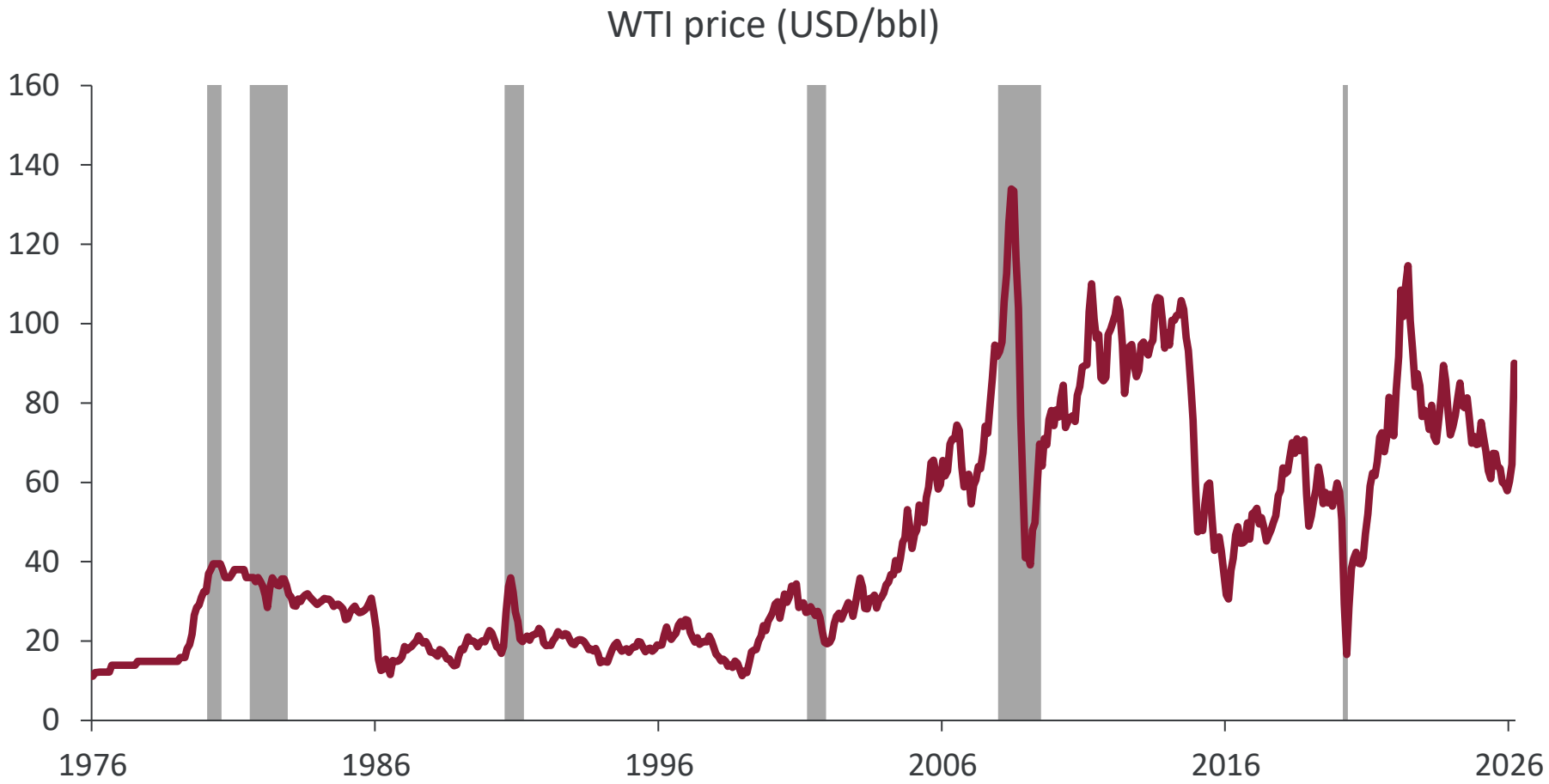
March 2026

CIBC

“There Are Decades Where Nothing Happens, and Weeks Where Decades Happen”

- Vladimir Lenin

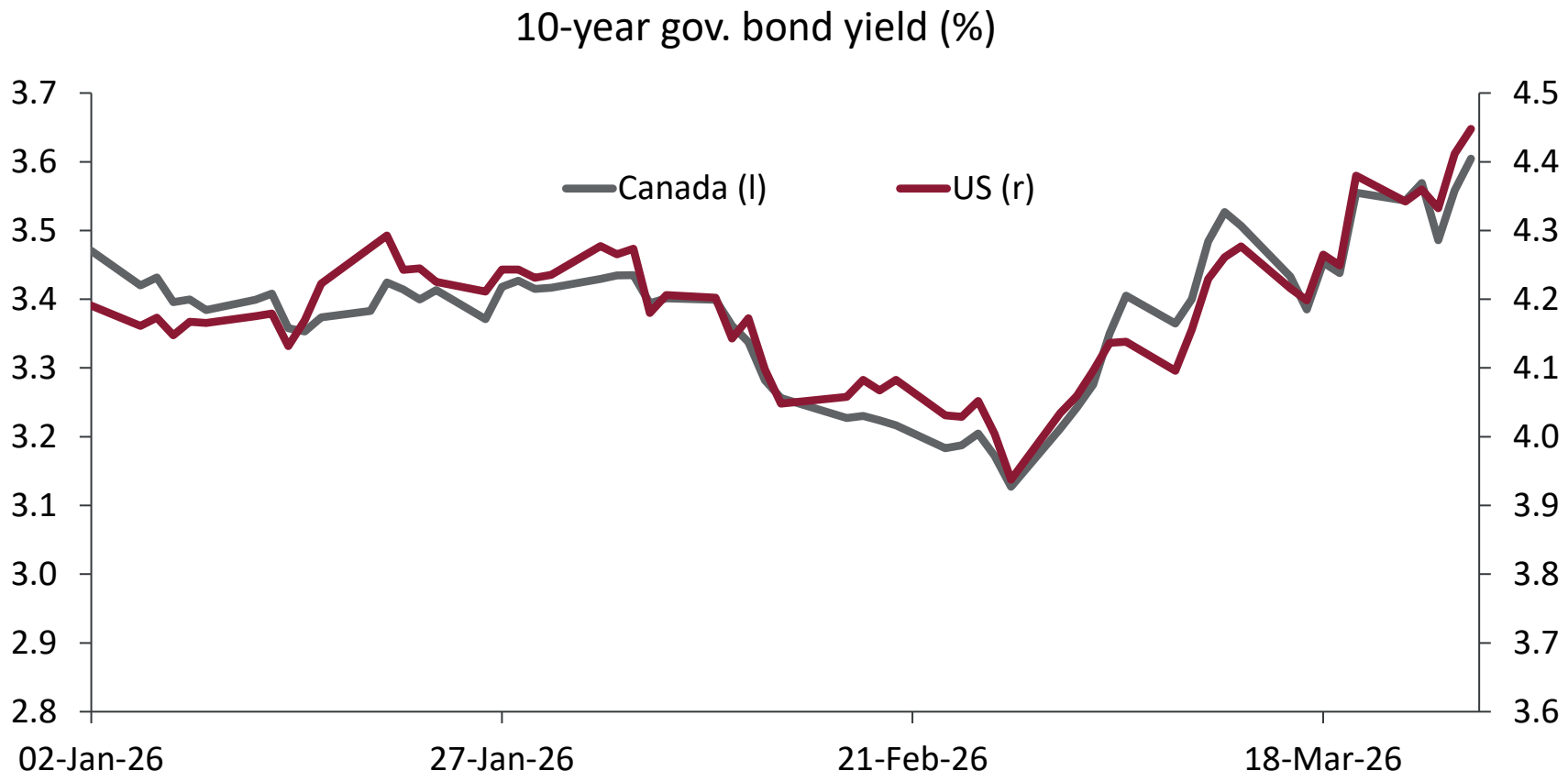
Oil shocks and recessions…



Source: Bloomberg, Haver Analytics, CIBC

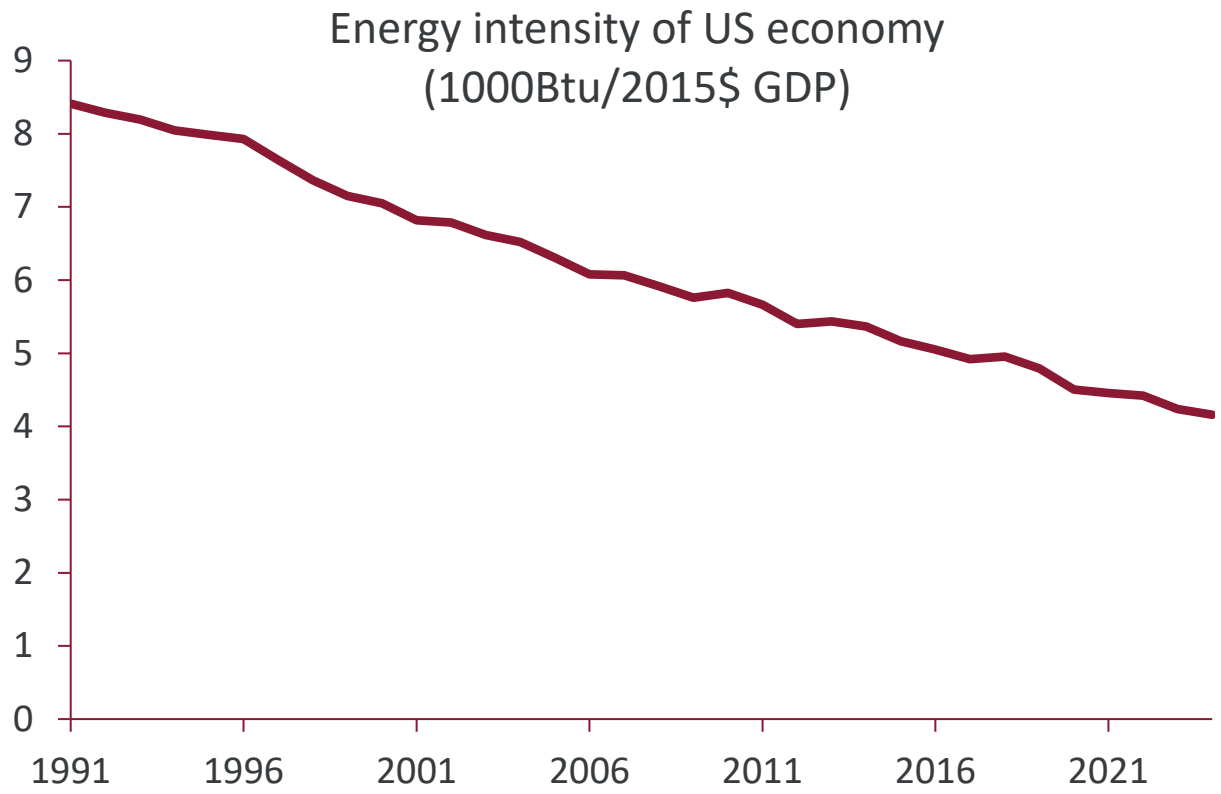
CIBC

Bond markets getting nervoues



Source: Bloomberg, CIBC

US Energy intensity



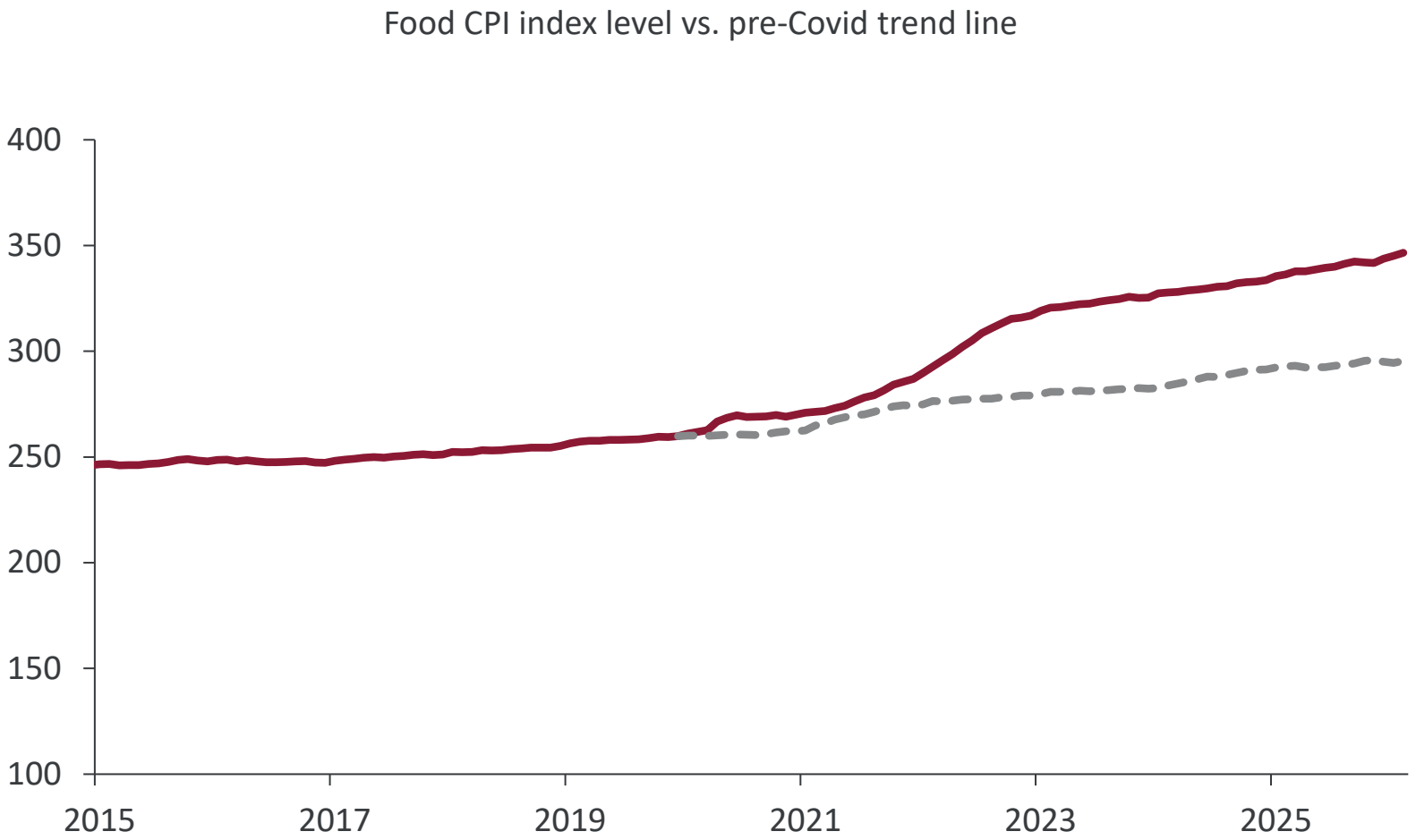
Source: EIA, CIBC

The efficiency paradox

As technology increases energy efficiency, the total consumption of energy increases rather than decreases.

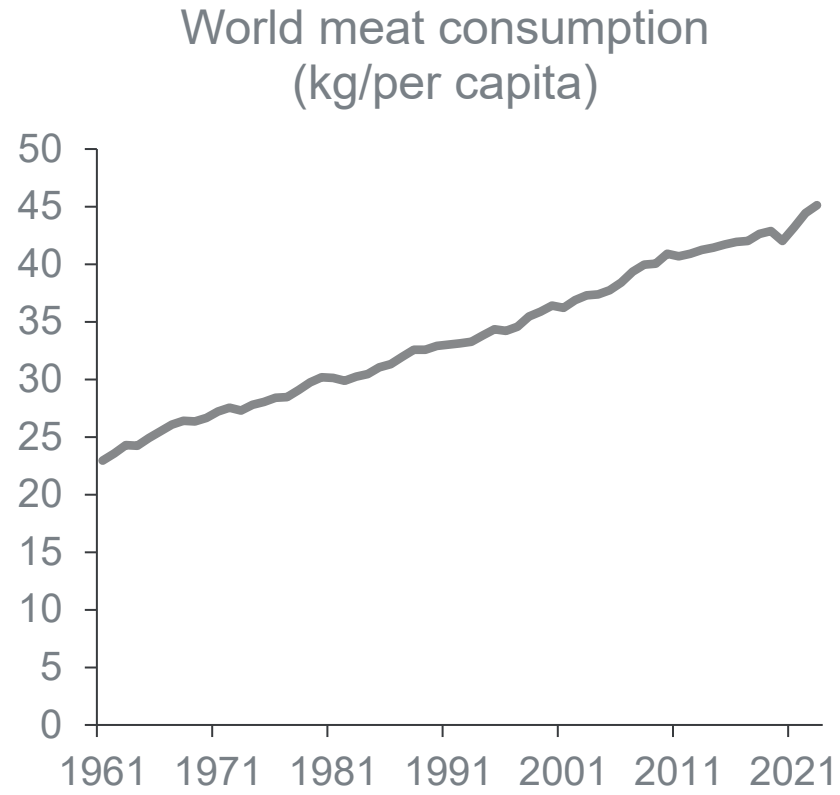
In other words, improved efficiency lowers costs, encouraging higher usage.

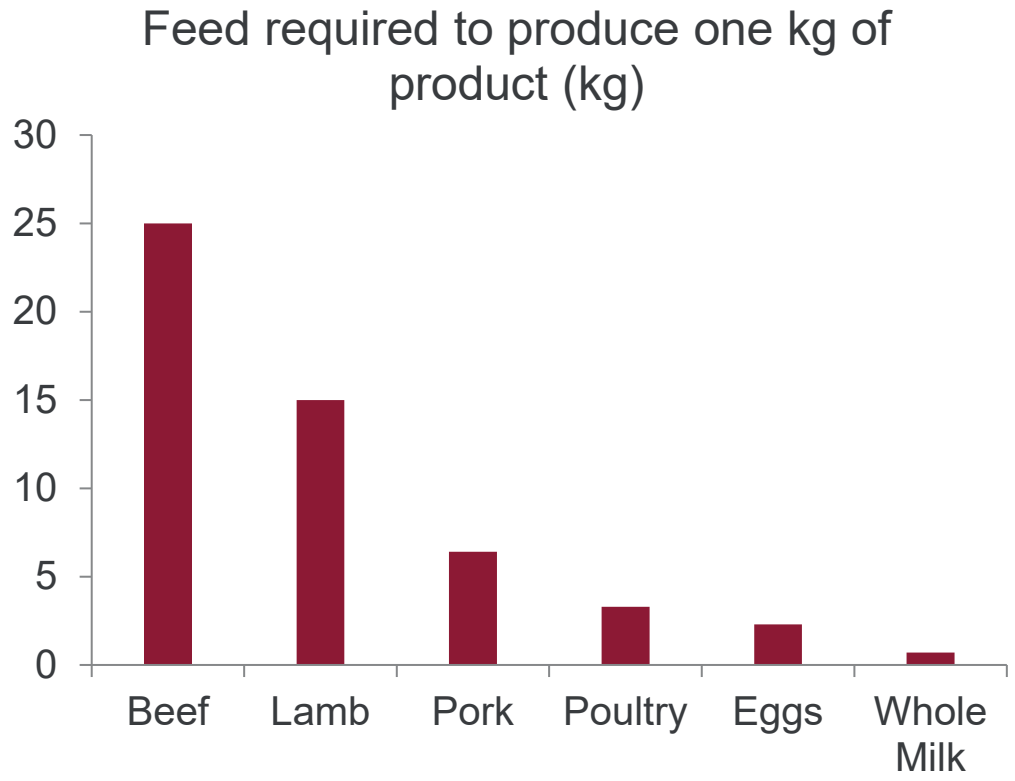
Food prices – already 20% higher than the trend line



Source: BLS, CIBC

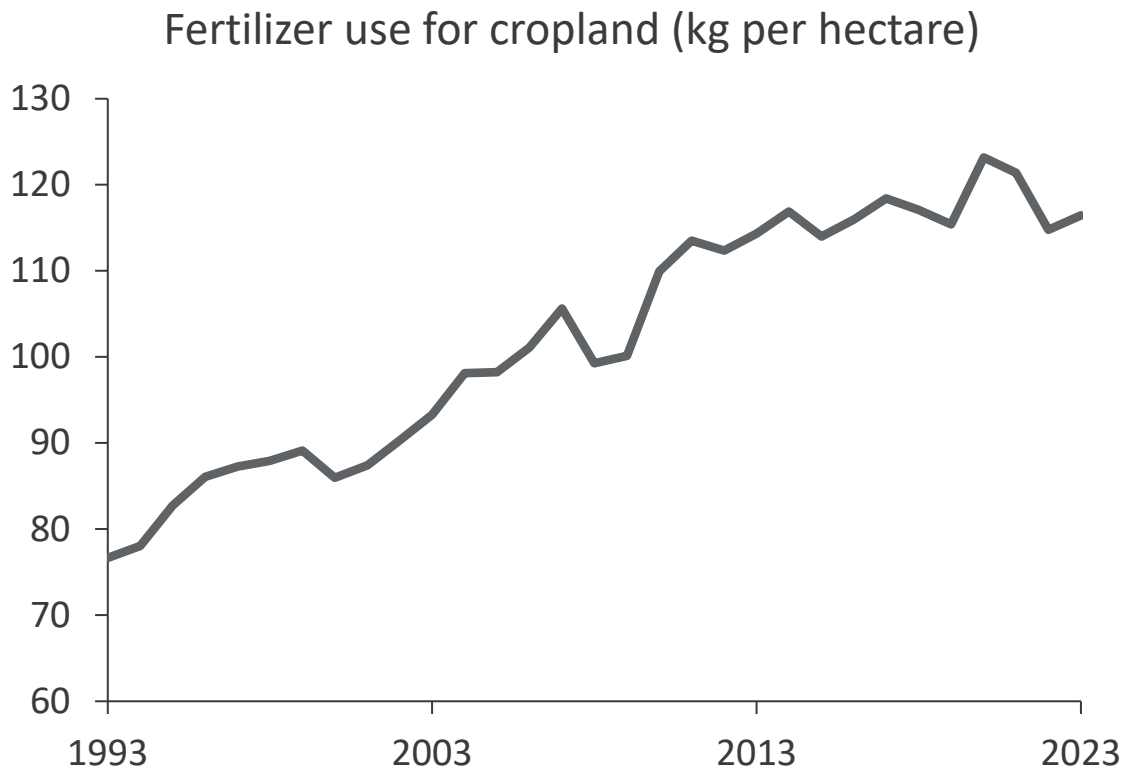
Meat consumption on the rise





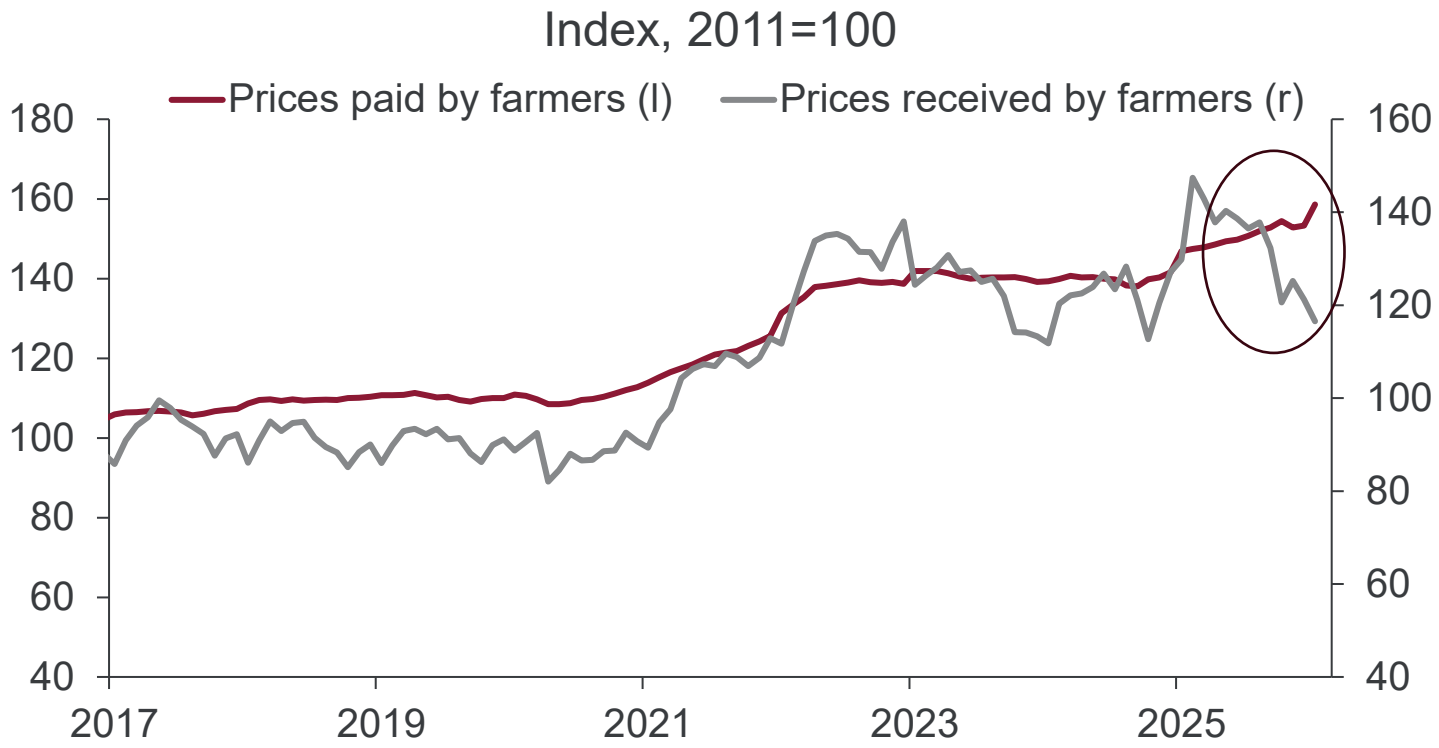
Source: USDA, Alexander et al. (2016), CIBC

Fertilizer use – on the rise



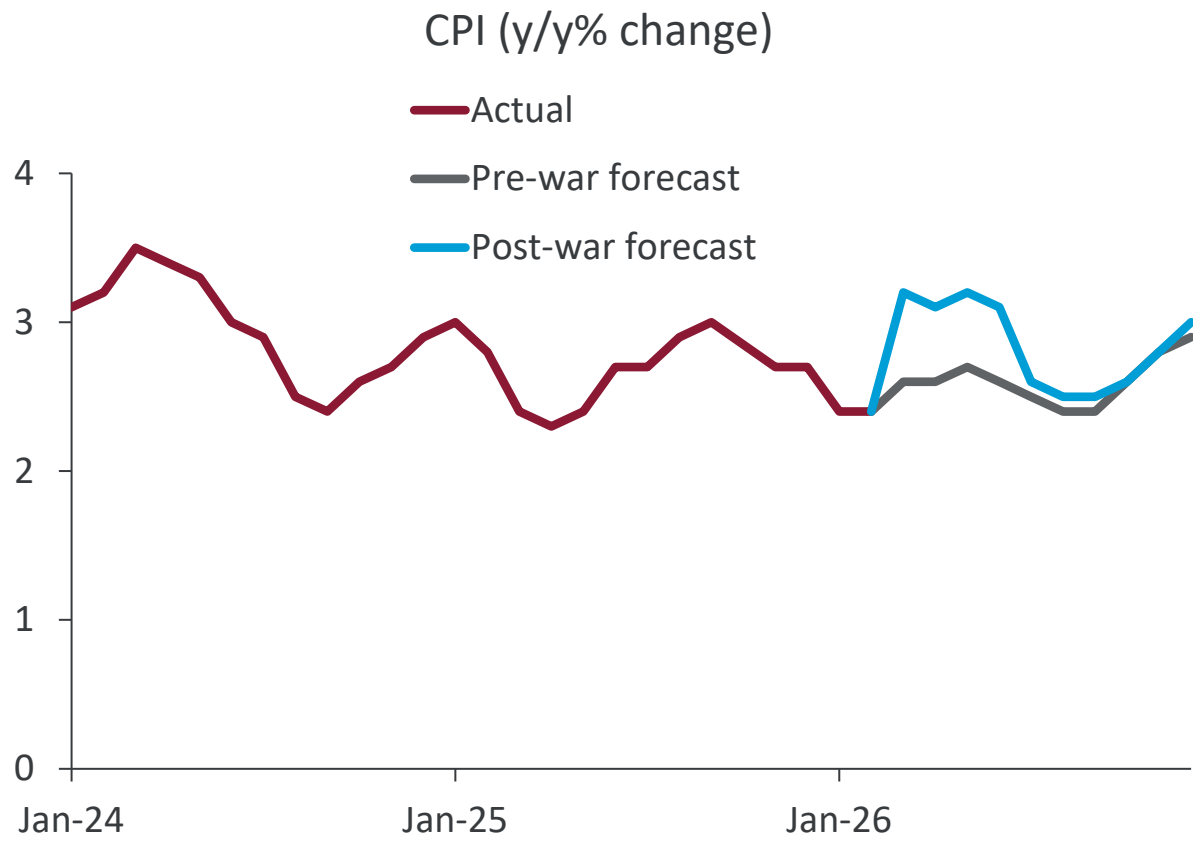
Source: Food and Agriculture Organization of the United Nations, CIBC

Farmers will have to raise prices



Source: BLS, CIBC

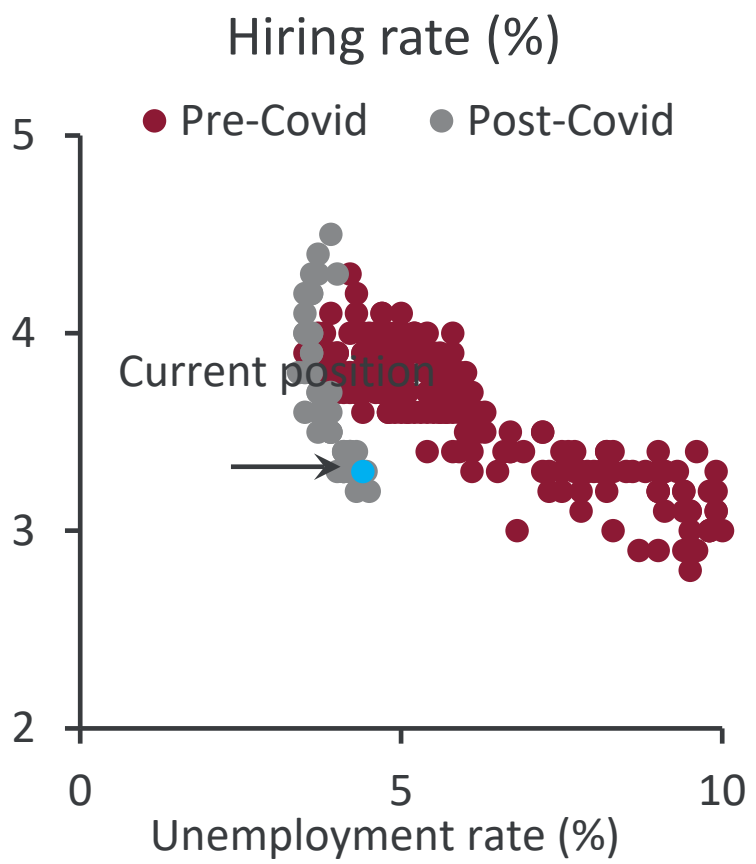
Oil shock could add a half percent to inflation in coming months



Source: BLS, CIBC

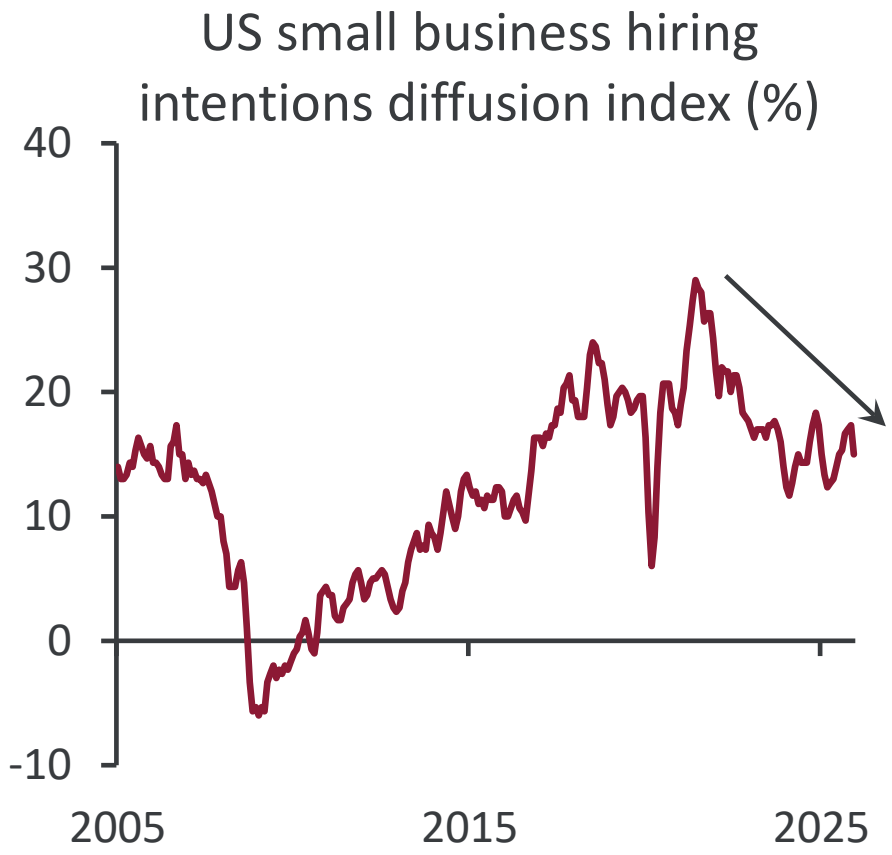
Hiring rate has plummeted (l), and is below what pre-Covid norms would imply given unemployment rate (r)

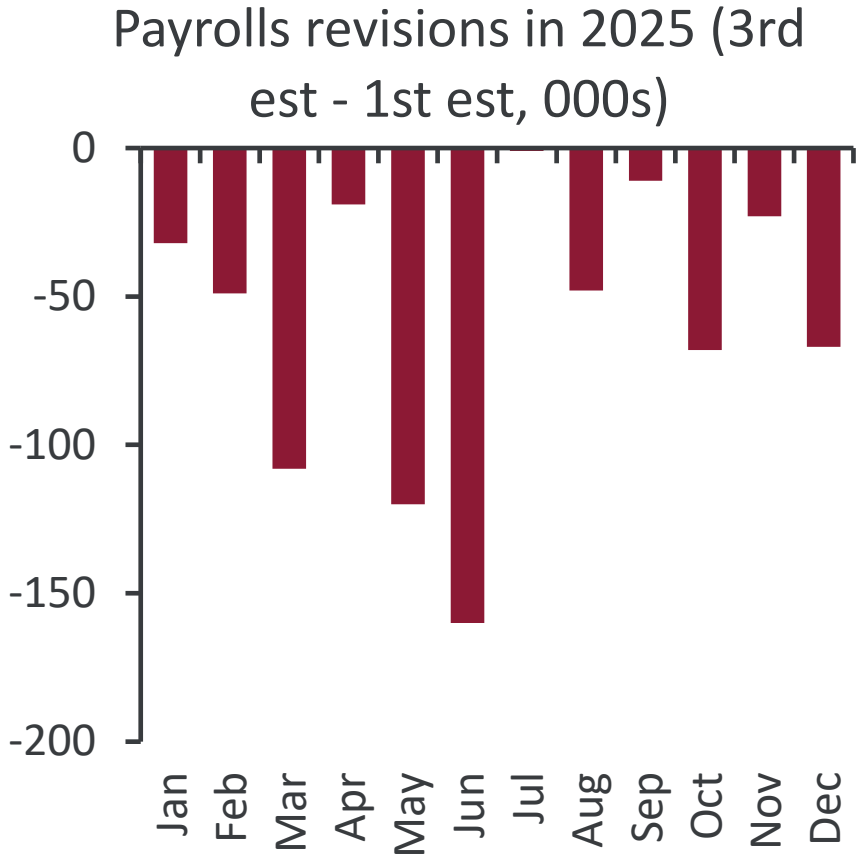




Source: BLS, CIBC

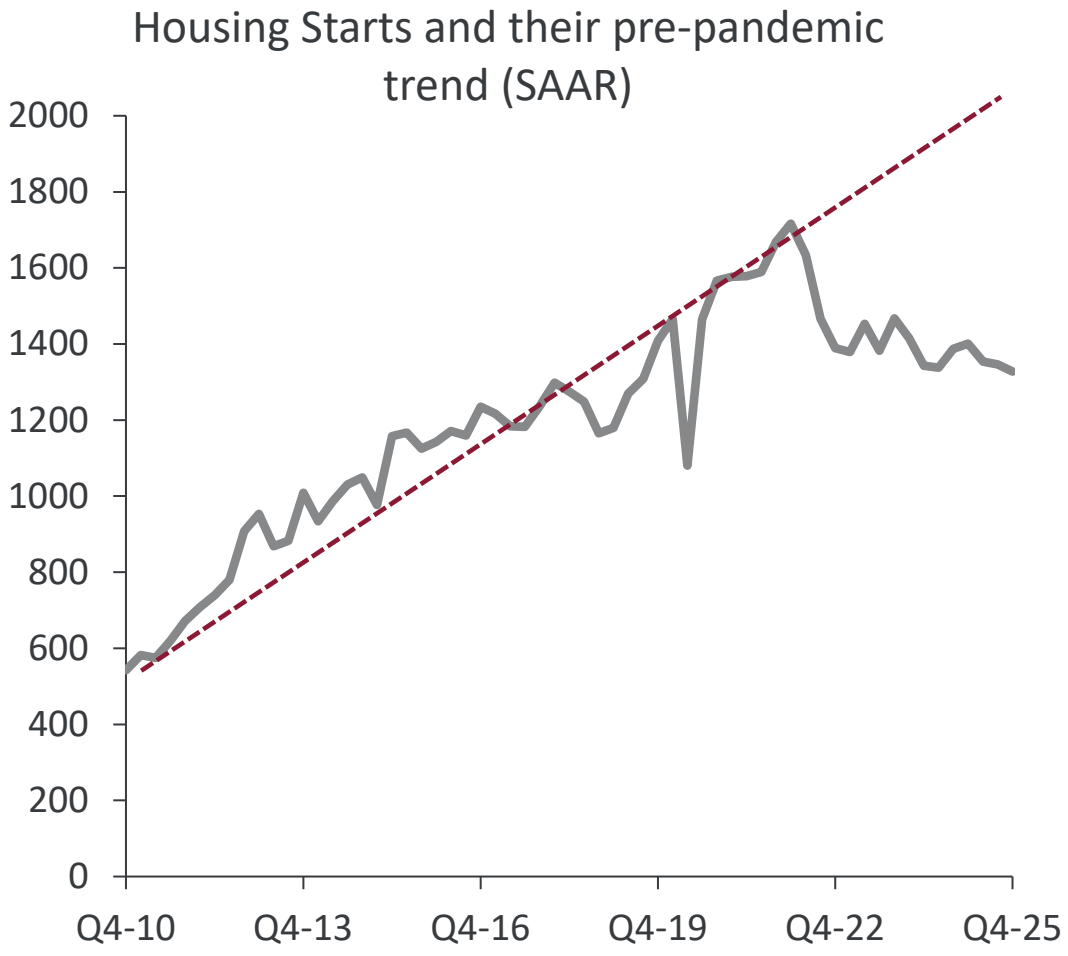
Small businesses not hiring much (l), payrolls revisions consistently weaker (r)

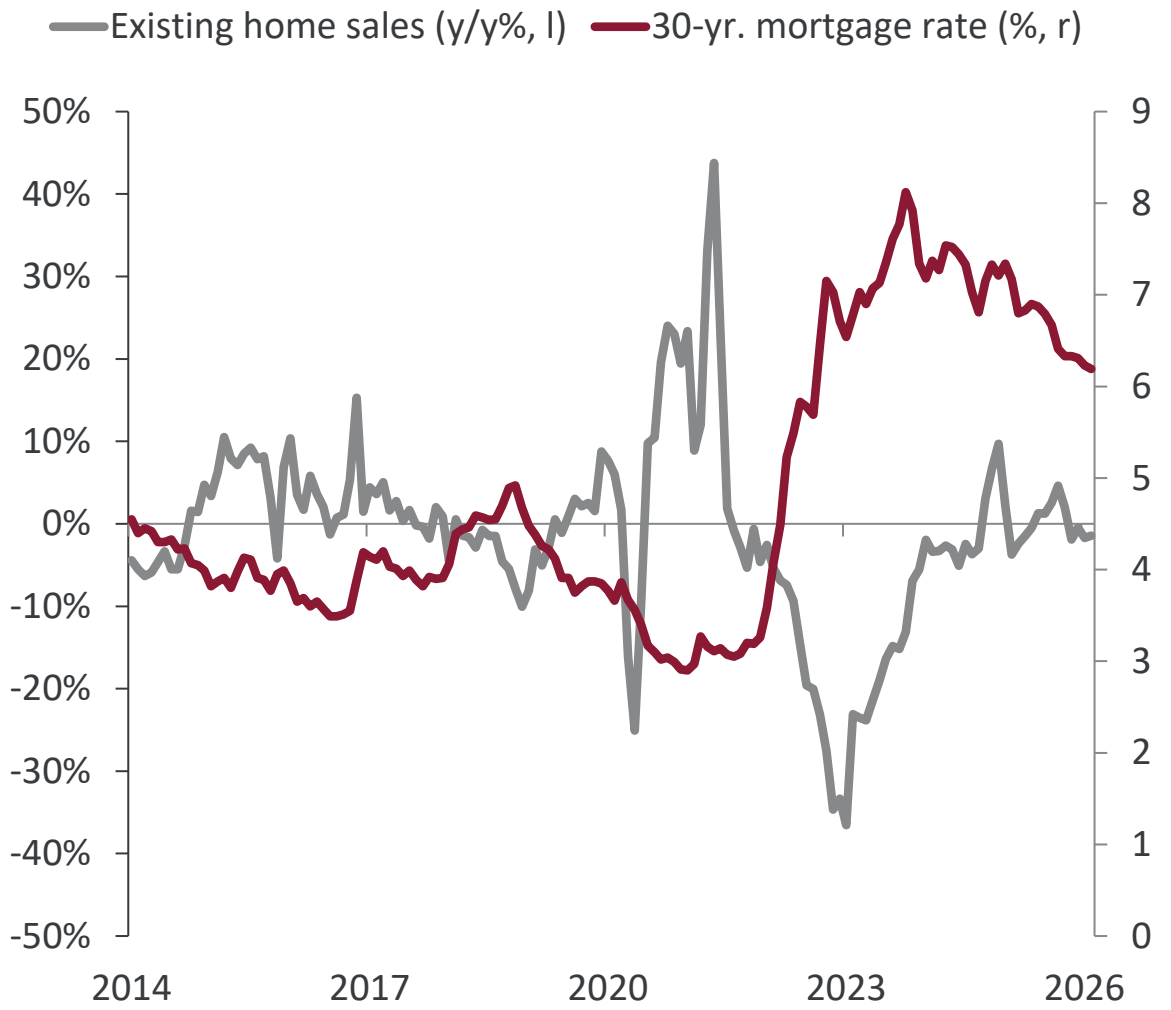




Source: Bloomberg, BLS, CIBC

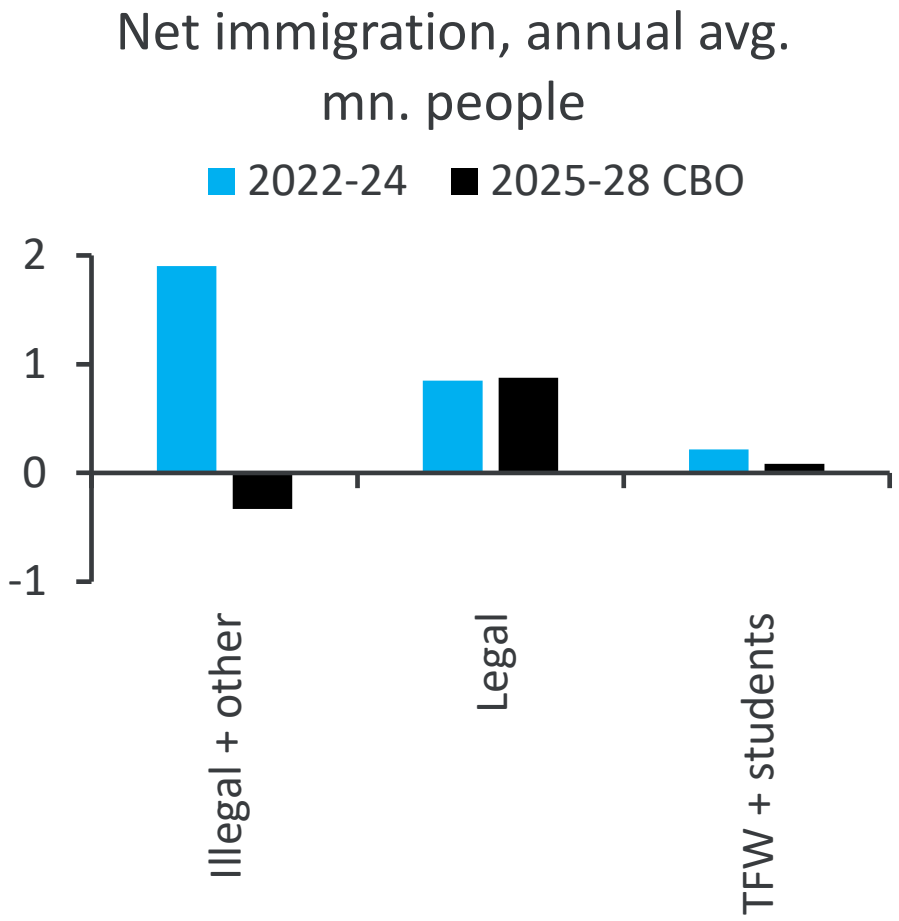
Elevated mortgage rates have weighed on housing activity

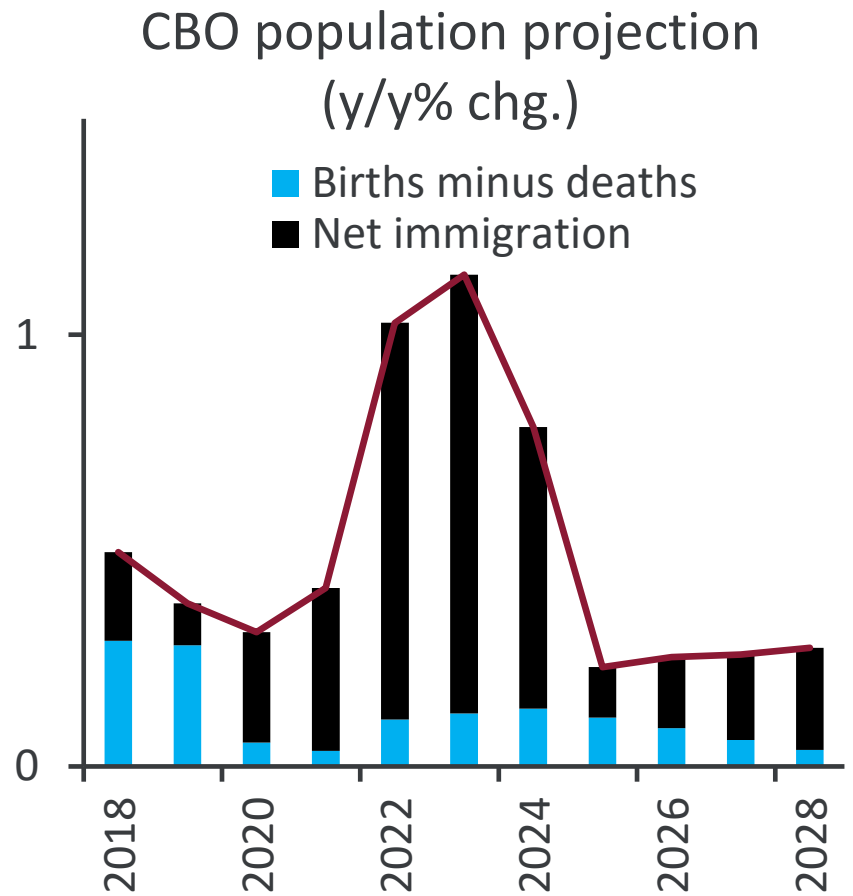




Source: Census Bureau, Haver Analytics, CIBC

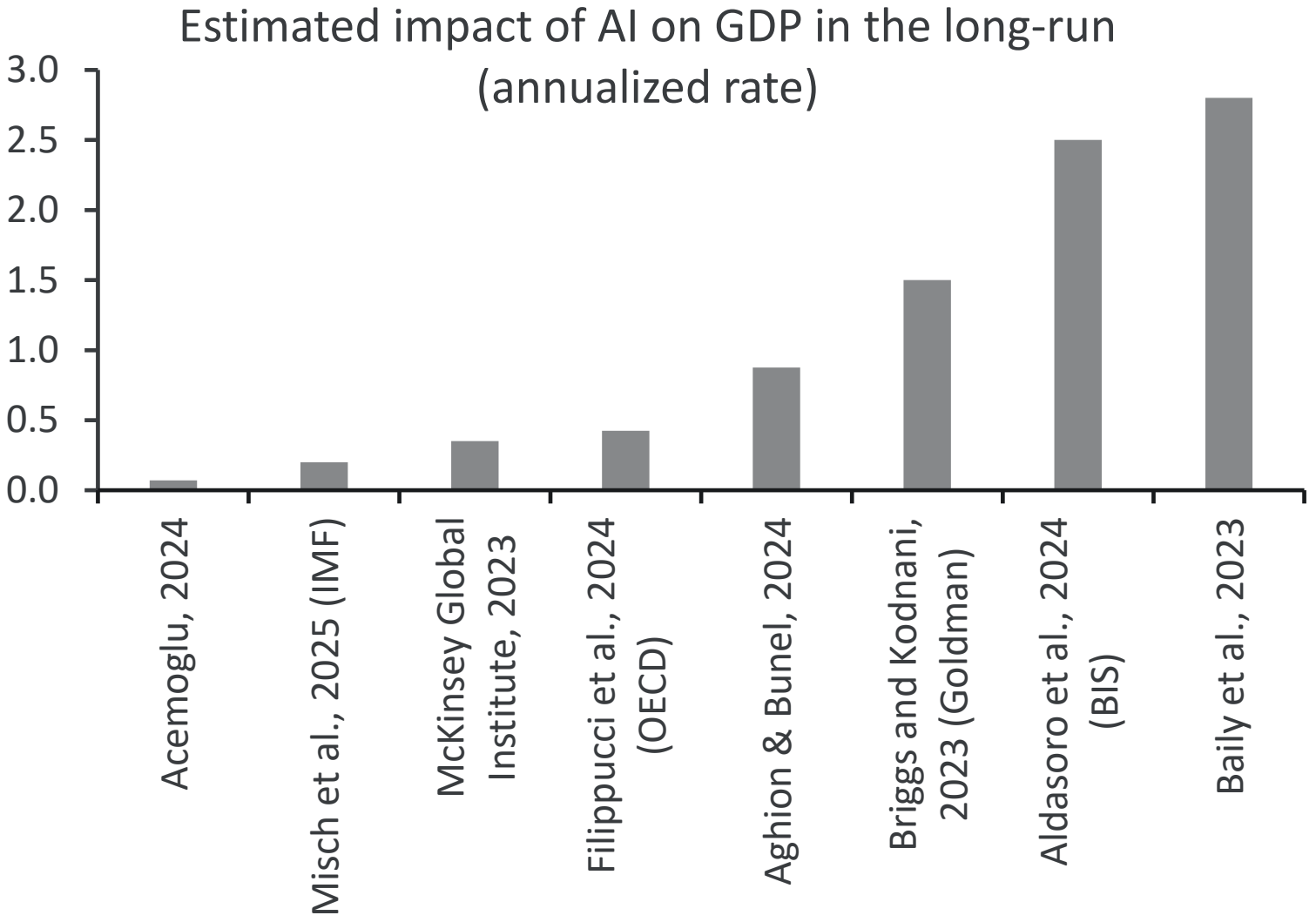
Illegal immigration subtracting from population (l), compounding the slowdown from net births (r)





Source: CBO, CIBC

AI impact estimates are all over the place. Even ChatGPT doesn't know. Total factor productivity, not labour productivity, is key



The Arctic of the deal



Many tariff options, but diminishing power

International Emergency Economic Powers Act (IEEPA)

Section 232 of the trade expansion of 1962

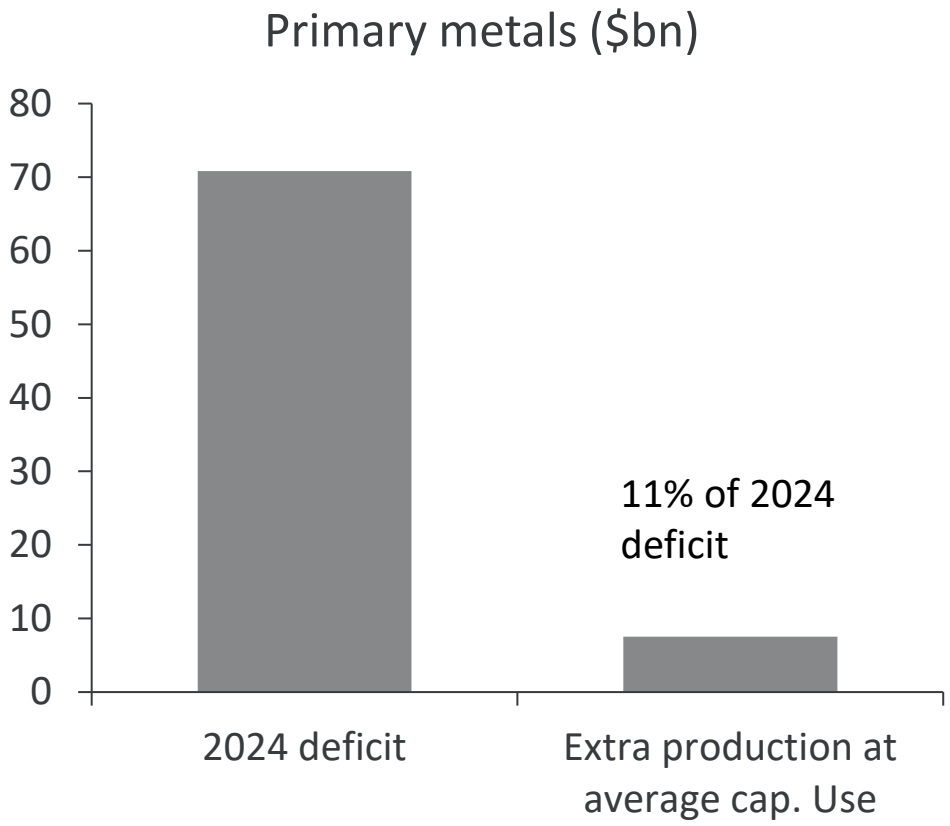
Section 122 of the trade Act of 1974

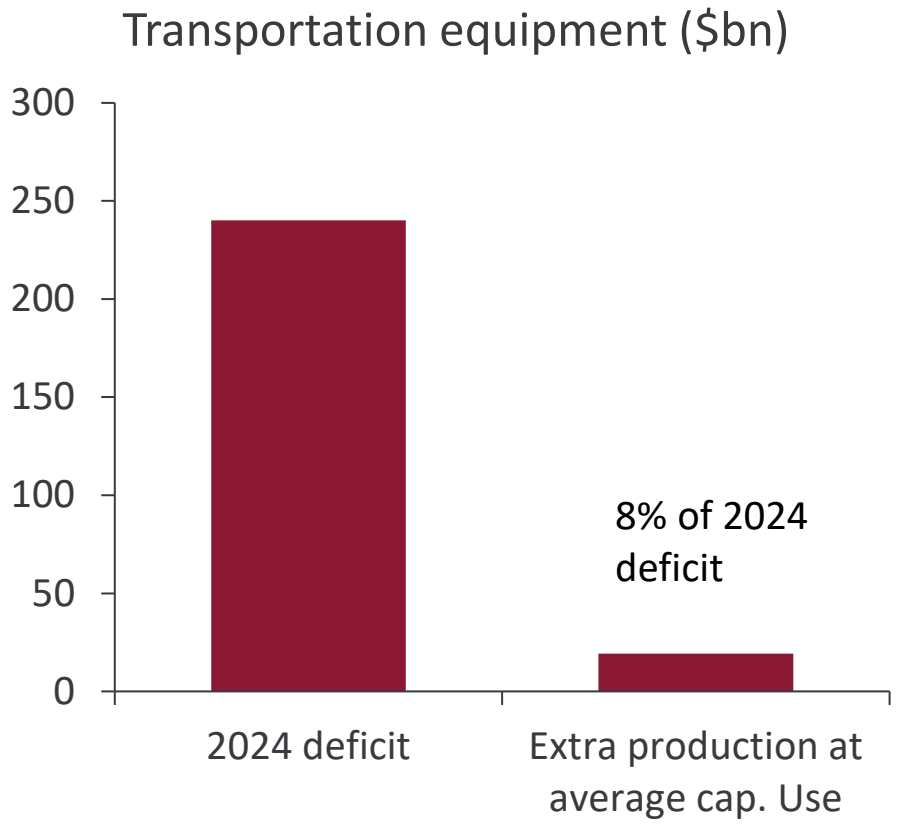
Section 338 of the Tariff Act of 1930

Section 201 of the Trade Act

Section 301 of the Trade Act

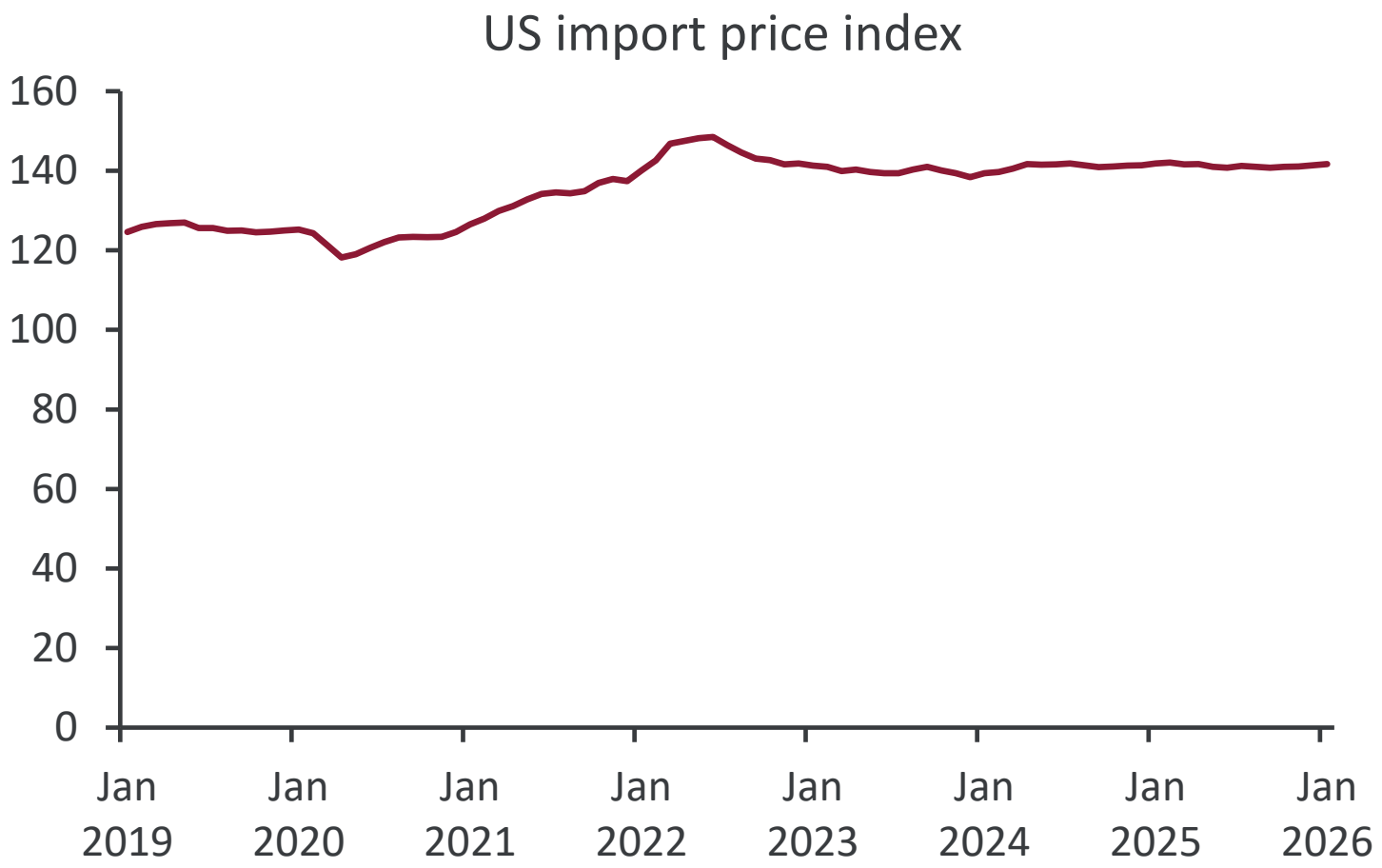
US manufacturers don’t have the capacity to replace imports in targeted sectors





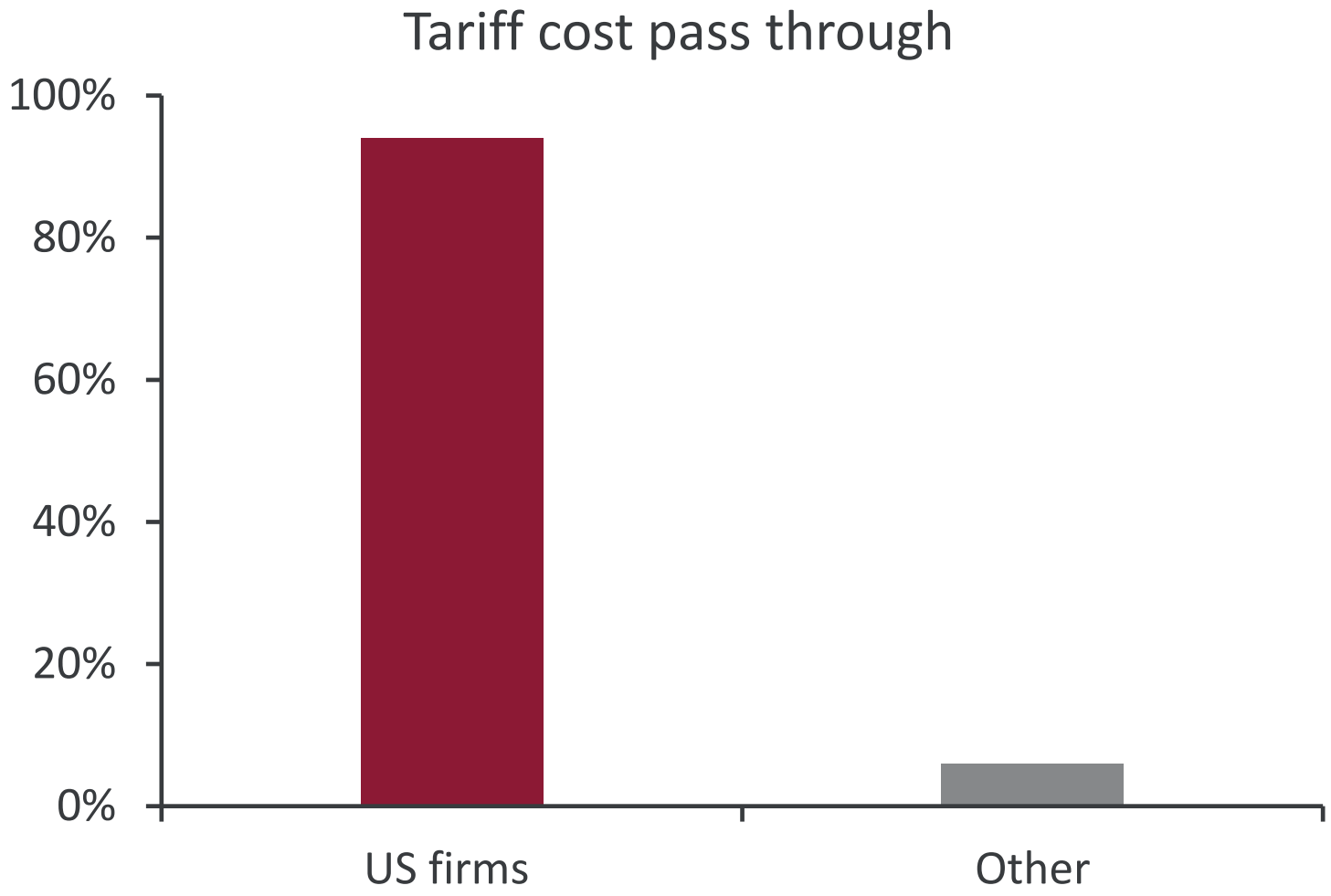
Source: Census Bureau, CIBC

Stable US import prices



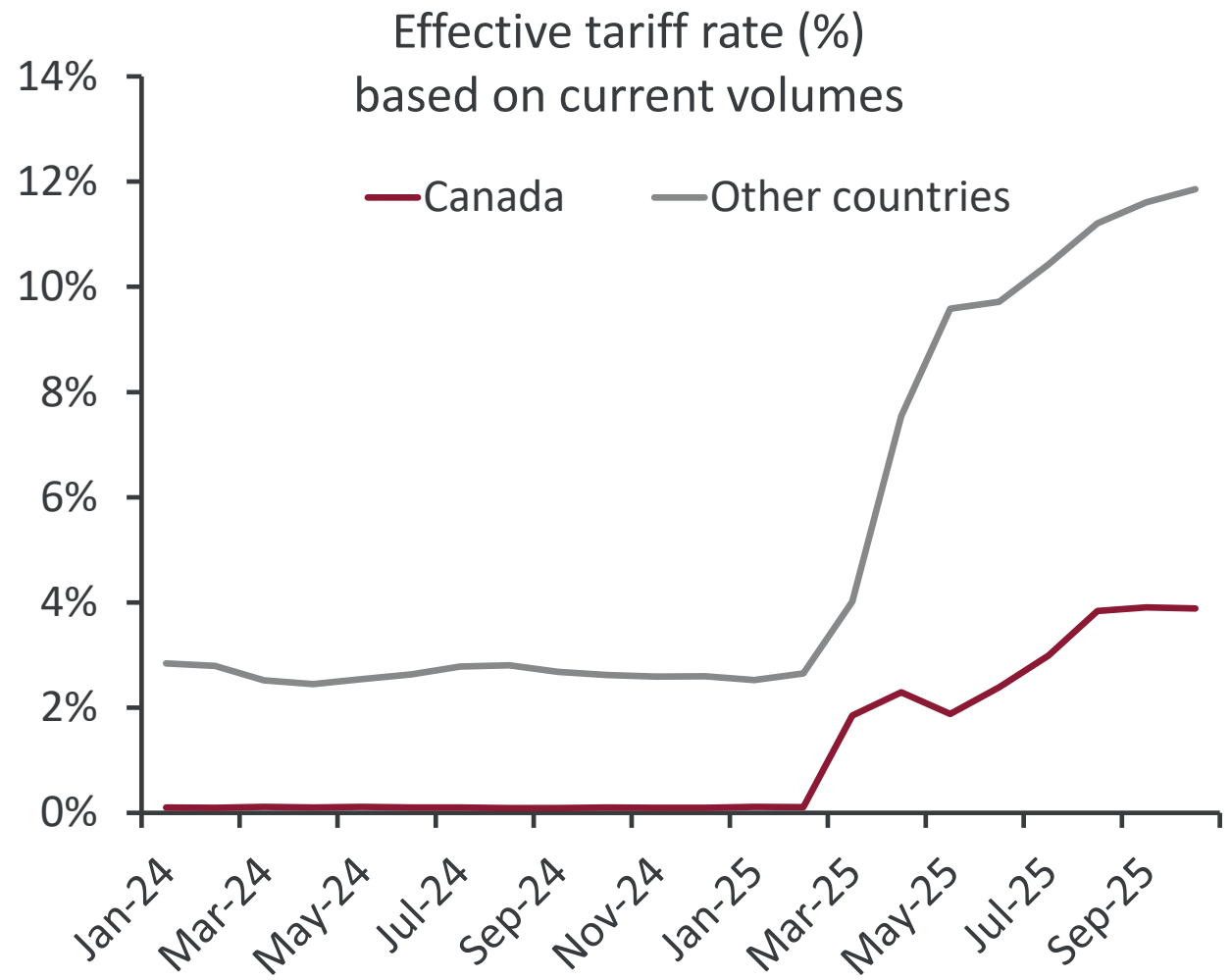
Source: BLS, CIBC

US firms absorb most of the cost



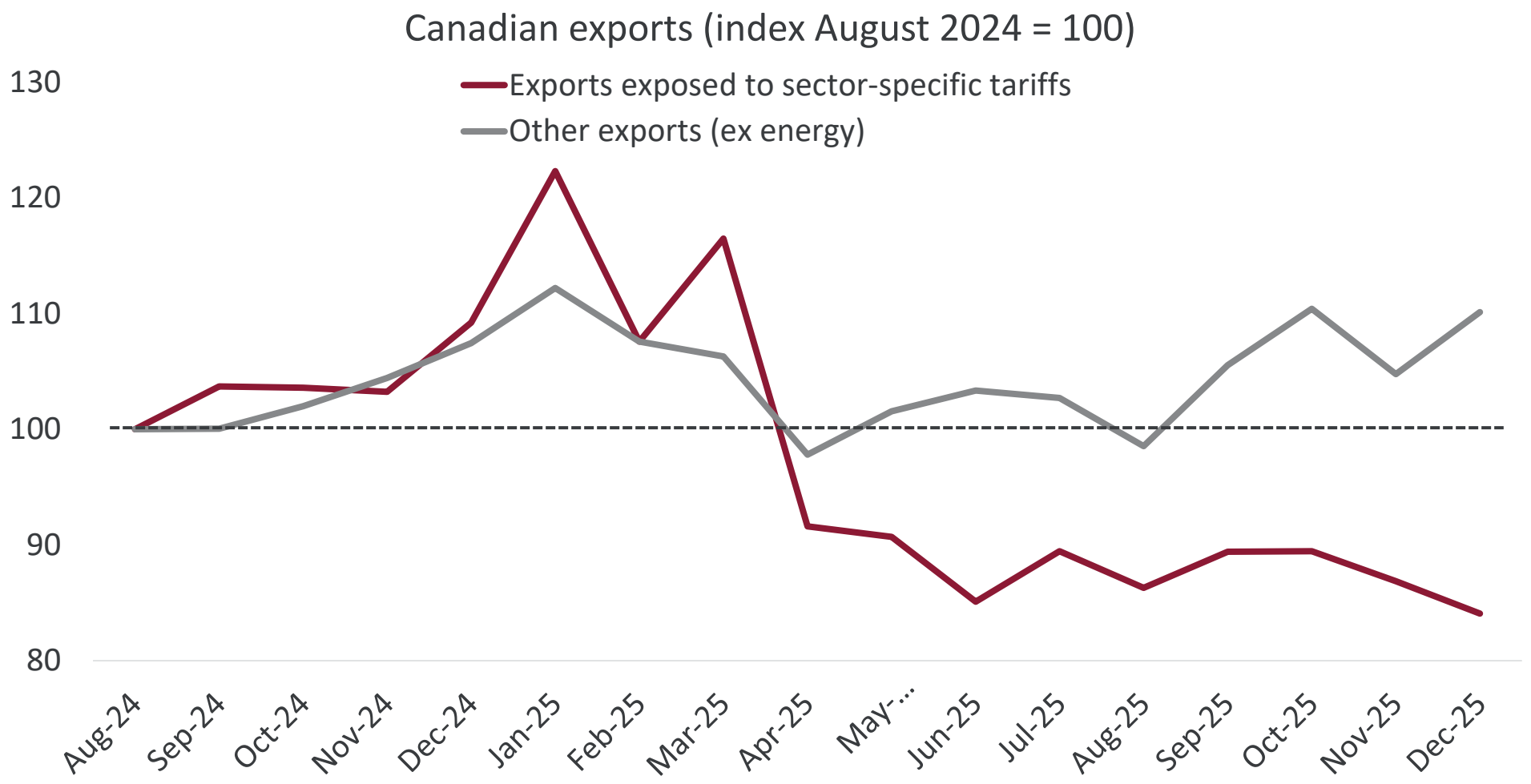
Source: HU, CIBC

Canada escaped broad US tariffs, but targeted sectors still hit hard



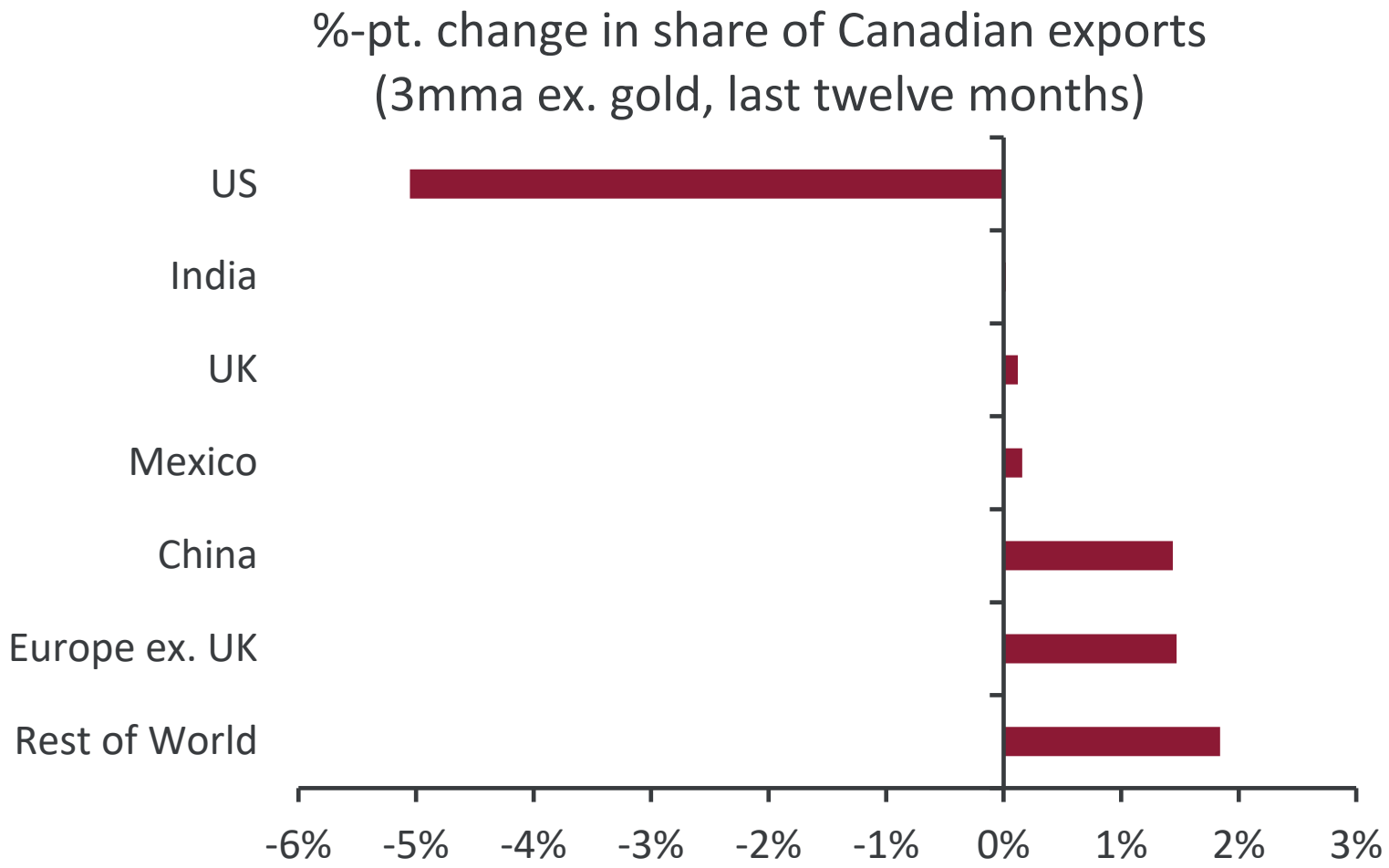
Source: Federal Reserve Bank of St Louis, CIBC

Sectors exposed to specific tariffs understandably underperforming



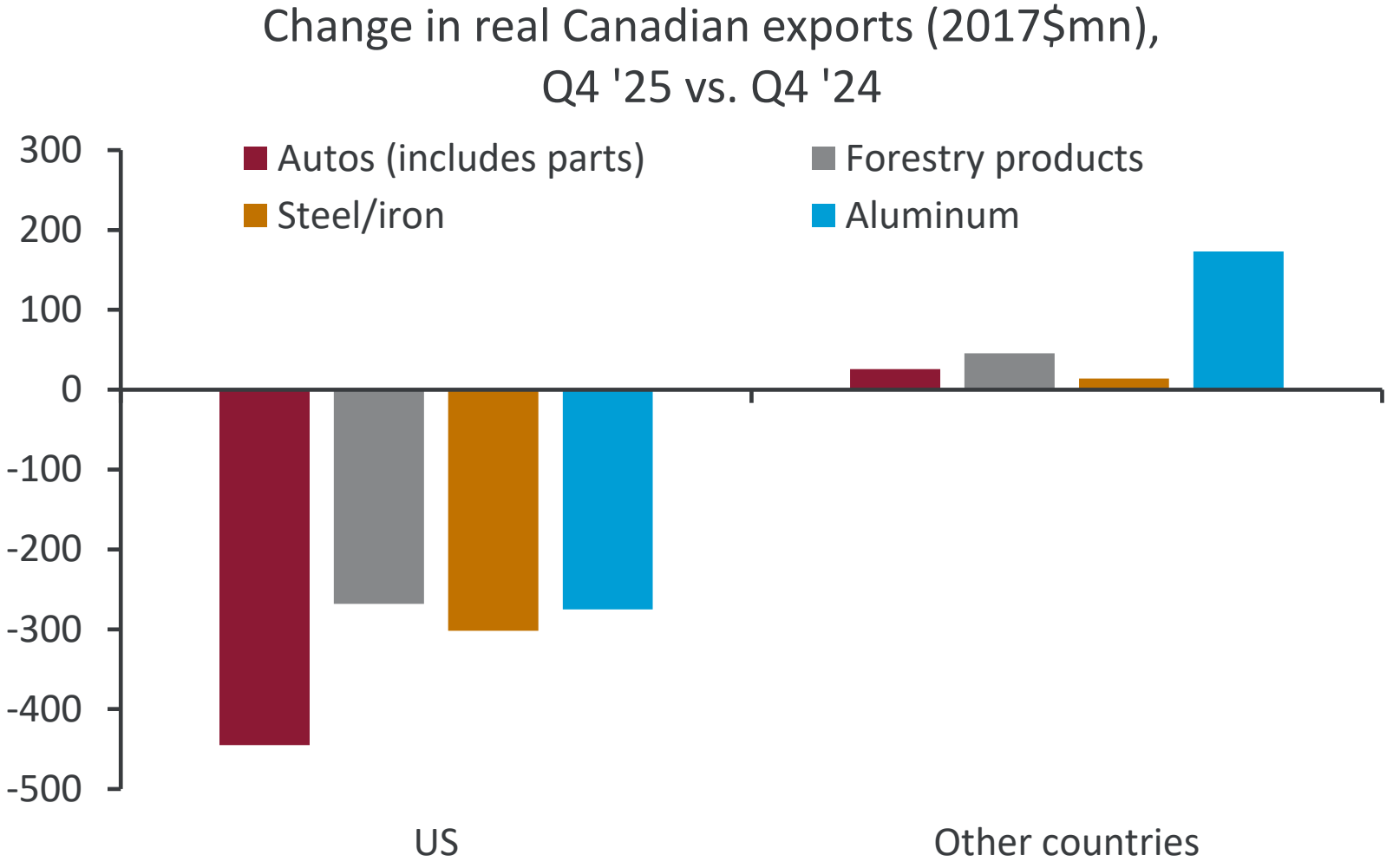
Source: Statistics Canada, CIBC

Re-directing trade flows



Source: StatCan, CIBC

Exports to US in high tariff sectors dropped; aluminum only sector to offset much of that



Source: StatCan, CIBC

Possible US trade policy outcomes for Canada, ranked from best to worst on three separate dimensions. RED = Base Case. Blue = Recession

USMCA review outcome:

1. Extended to 2042. 2. No further extension, but modest changes 3 Inconclusive, review again in 2027 4. Sunset clause and deal ends in 2036 5. US withdraws

Sectoral tariffs (national security or unfair trade practices)

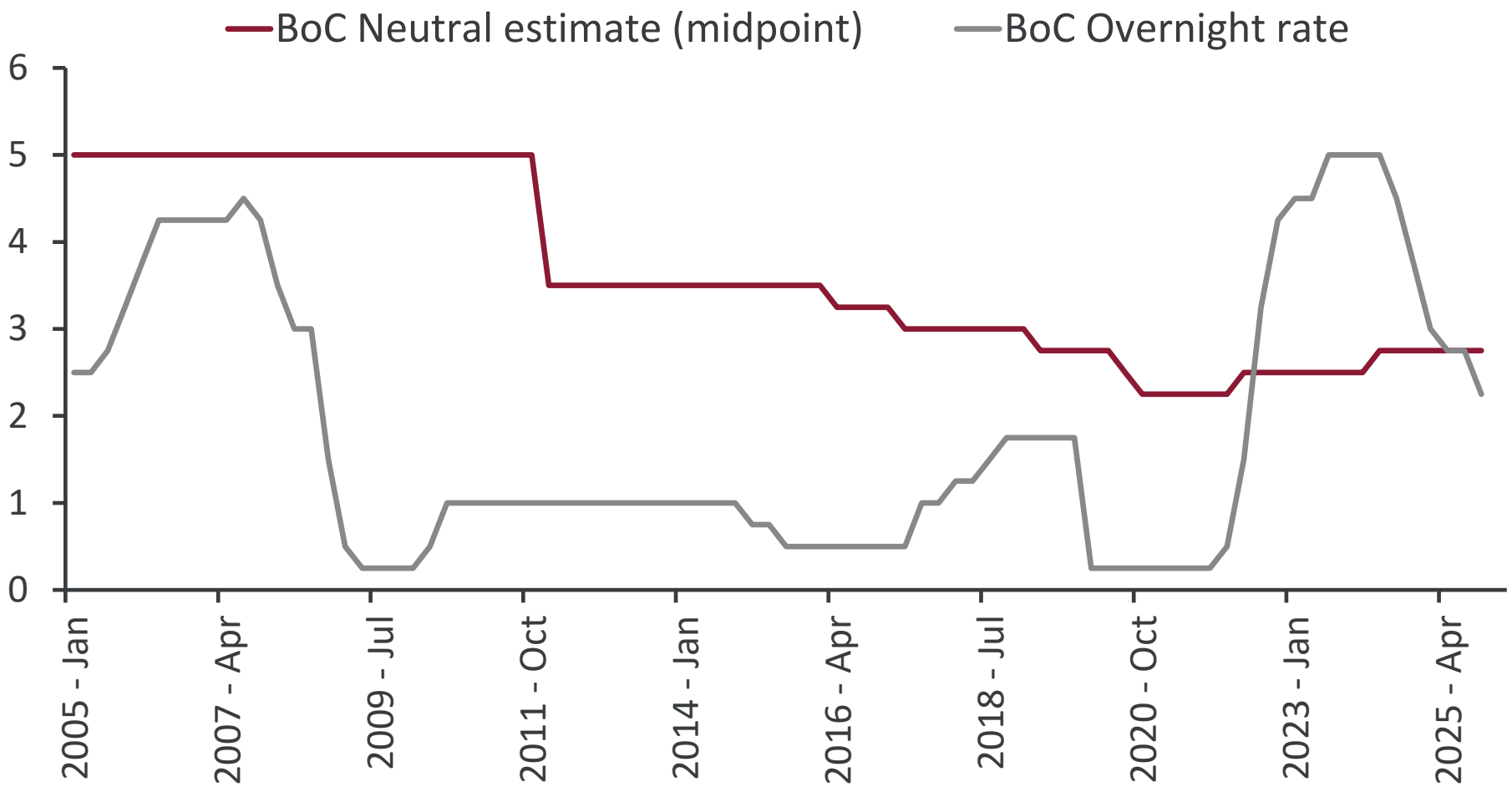
1.Current sectoral tariffs eliminated 2. Sectoral tariffs reduced
3. Sectoral tariffs unchanged 4. New sectoral tariffs added

Section 122, 301 or other broad tariffs

1. Canada stays exempt 2. Canada subject to MFN tariffs 3. Canada subject to elevated tariffs at 10% or more on most exports

CIBC

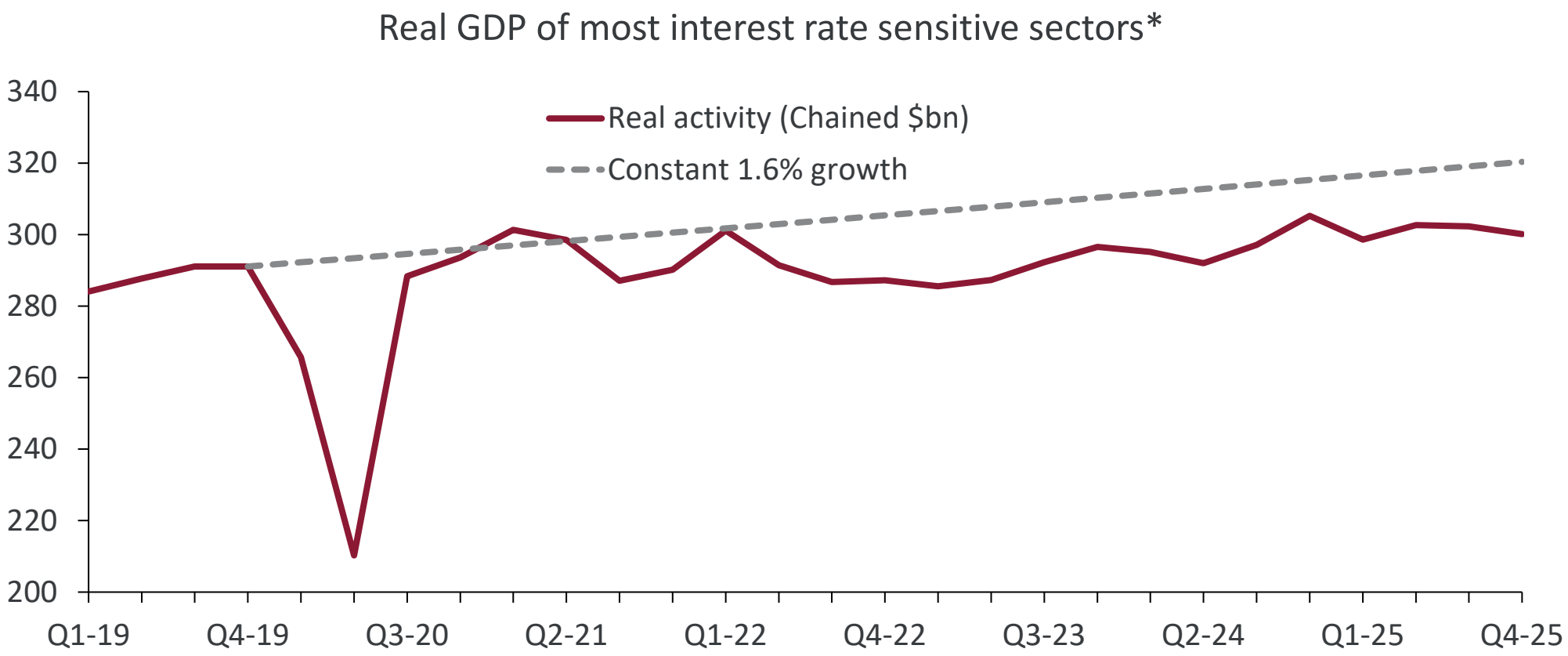
Rates are only barely stimulative;
A lot of precedents for just “sitting there” at even lower rates



Source: Statistics Canada, CIBC

CIBC

Are “stimulative” interest rates really doing any stimulating?



*Res. inv. new construction, home transfer costs, renovation
Cons. spend. autos, transport serv. furniture

Source: StatCan, CIBC

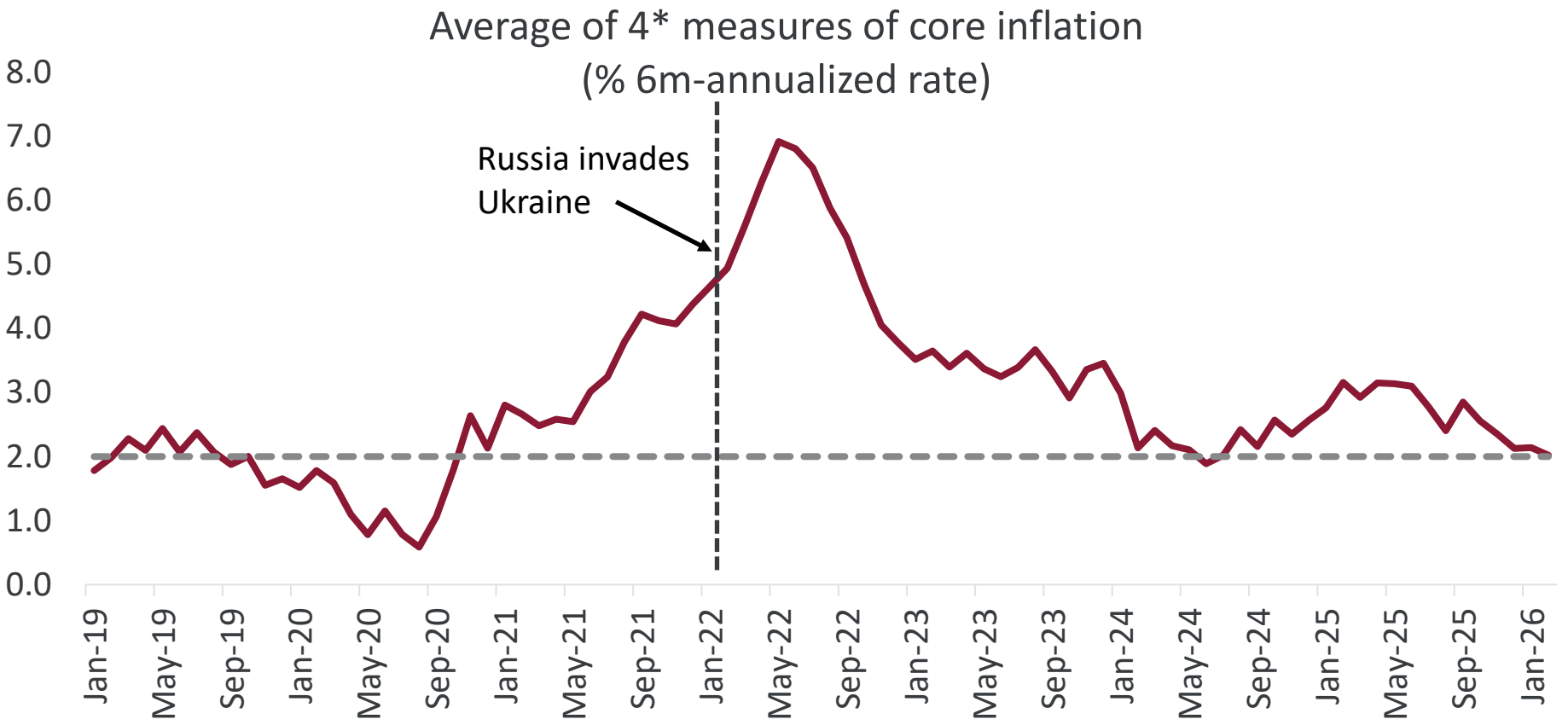
The labour market is MUCH weaker than in last oil shock





Source: Statistics Canada, CIBC

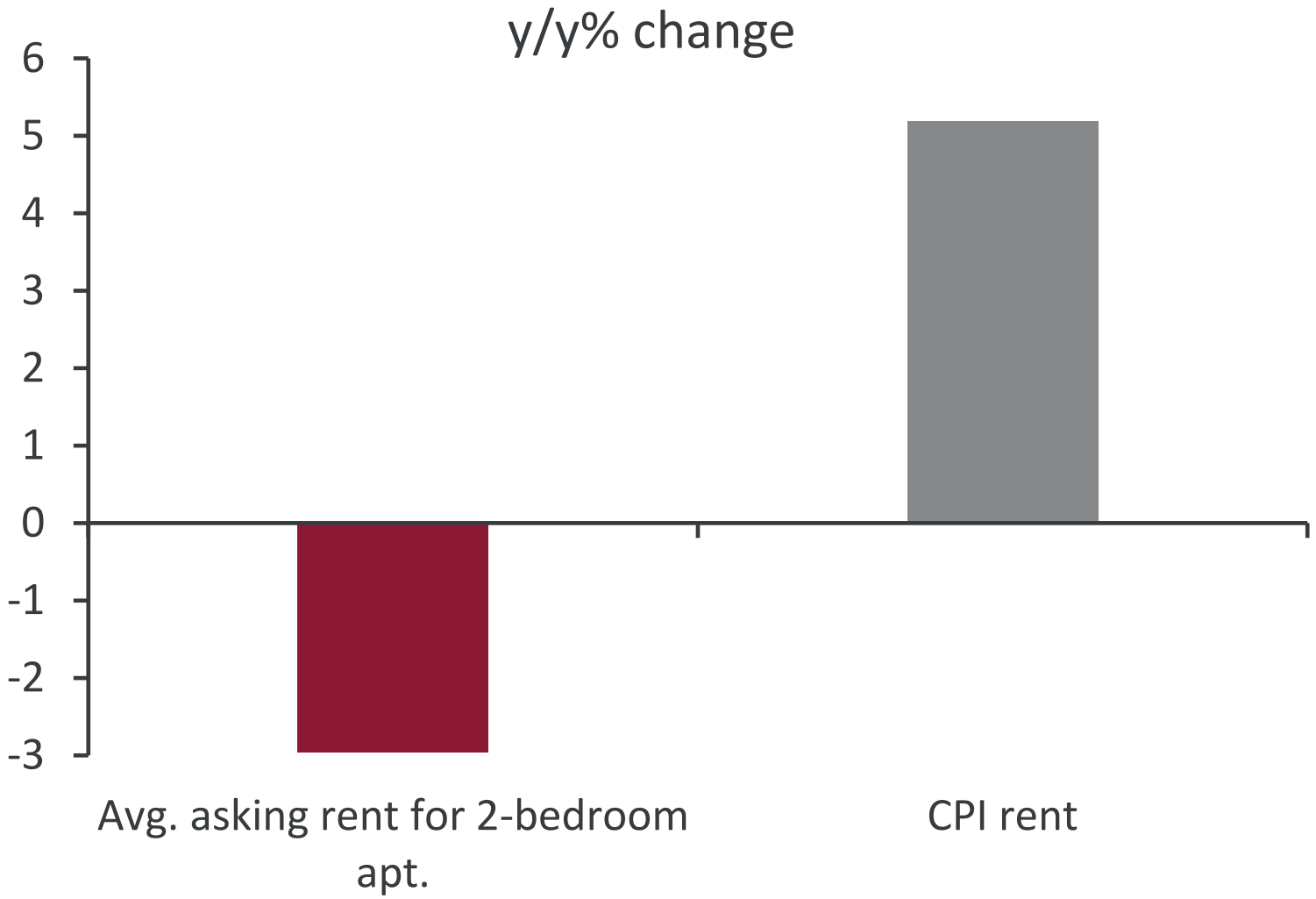
Underlying inflation back near 2% prior to this year's oil shock…



*CPI-X, CPI-Trim, CPI-median, CPI ex food/energy

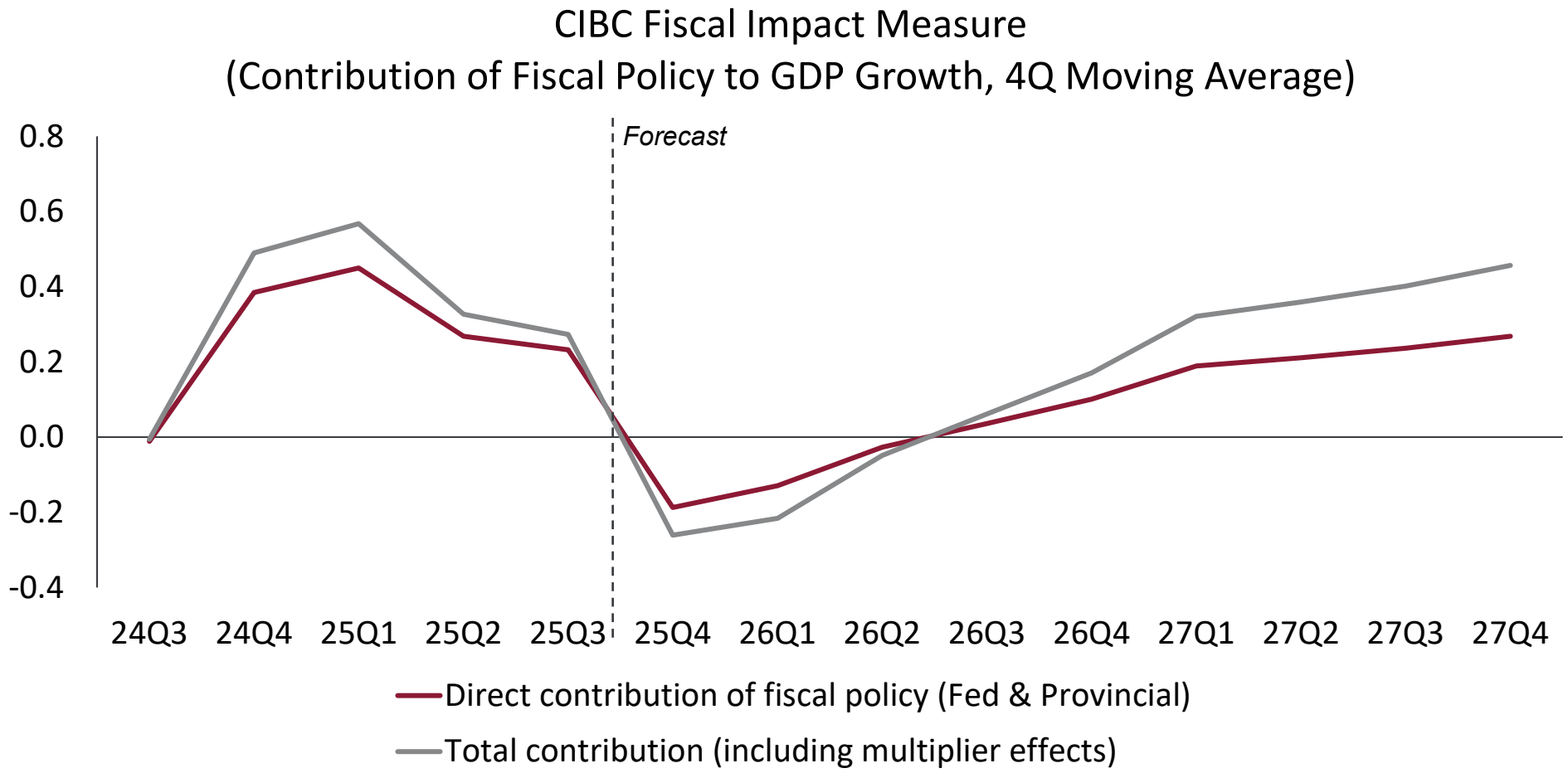
Source: Statistics Canada, CIBC

Rents rising by 5% -- really????



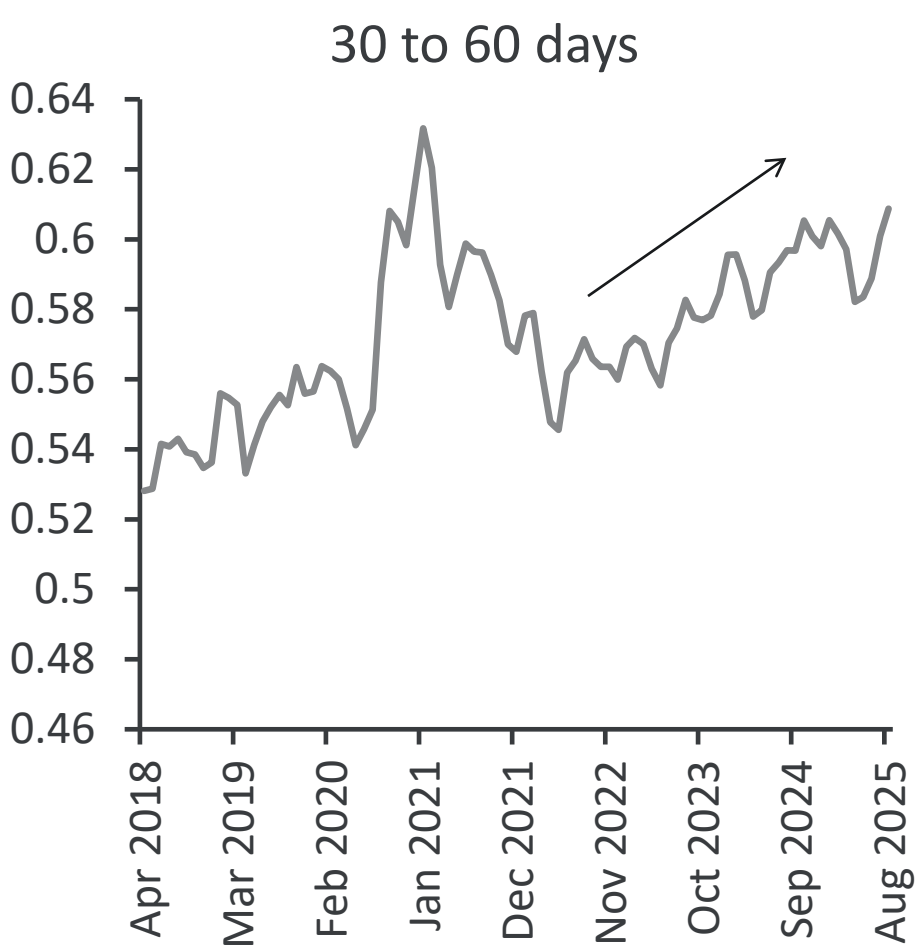
Source: Statistics Canada, CMHC, CIBC

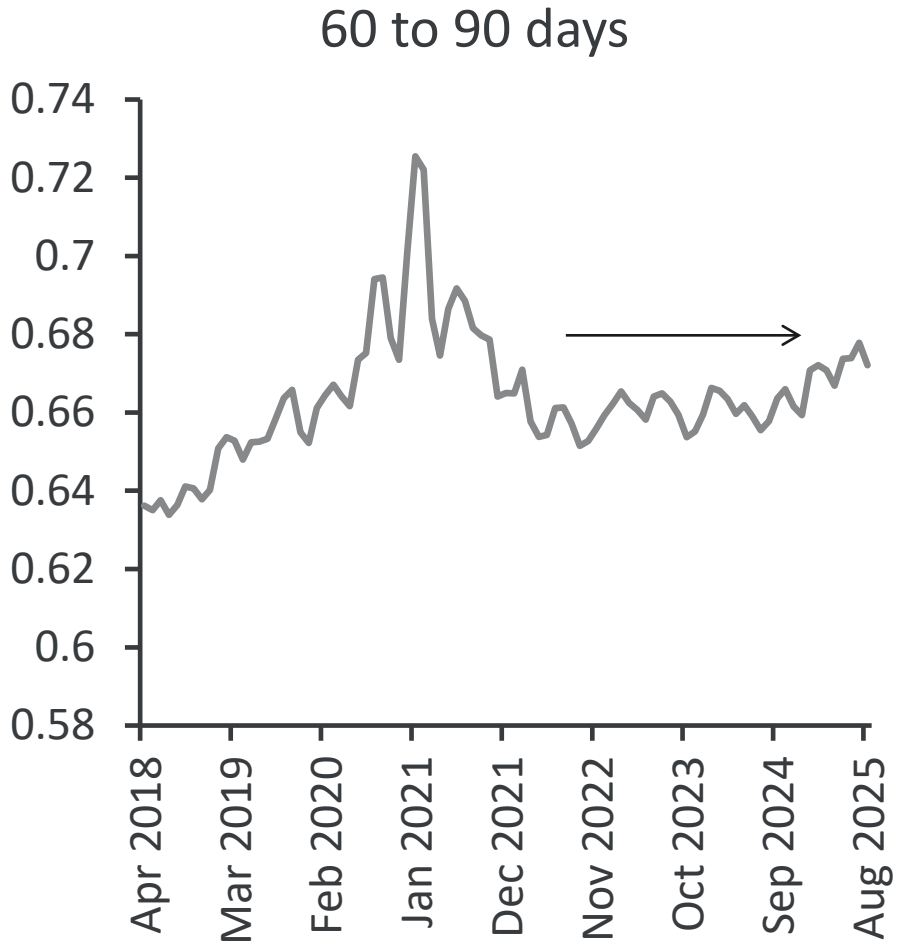
Fiscal boost? Your patience is appreciated



Source: Federal and Provincial Budgets, CIBC calculations

Delinquencies moving from…

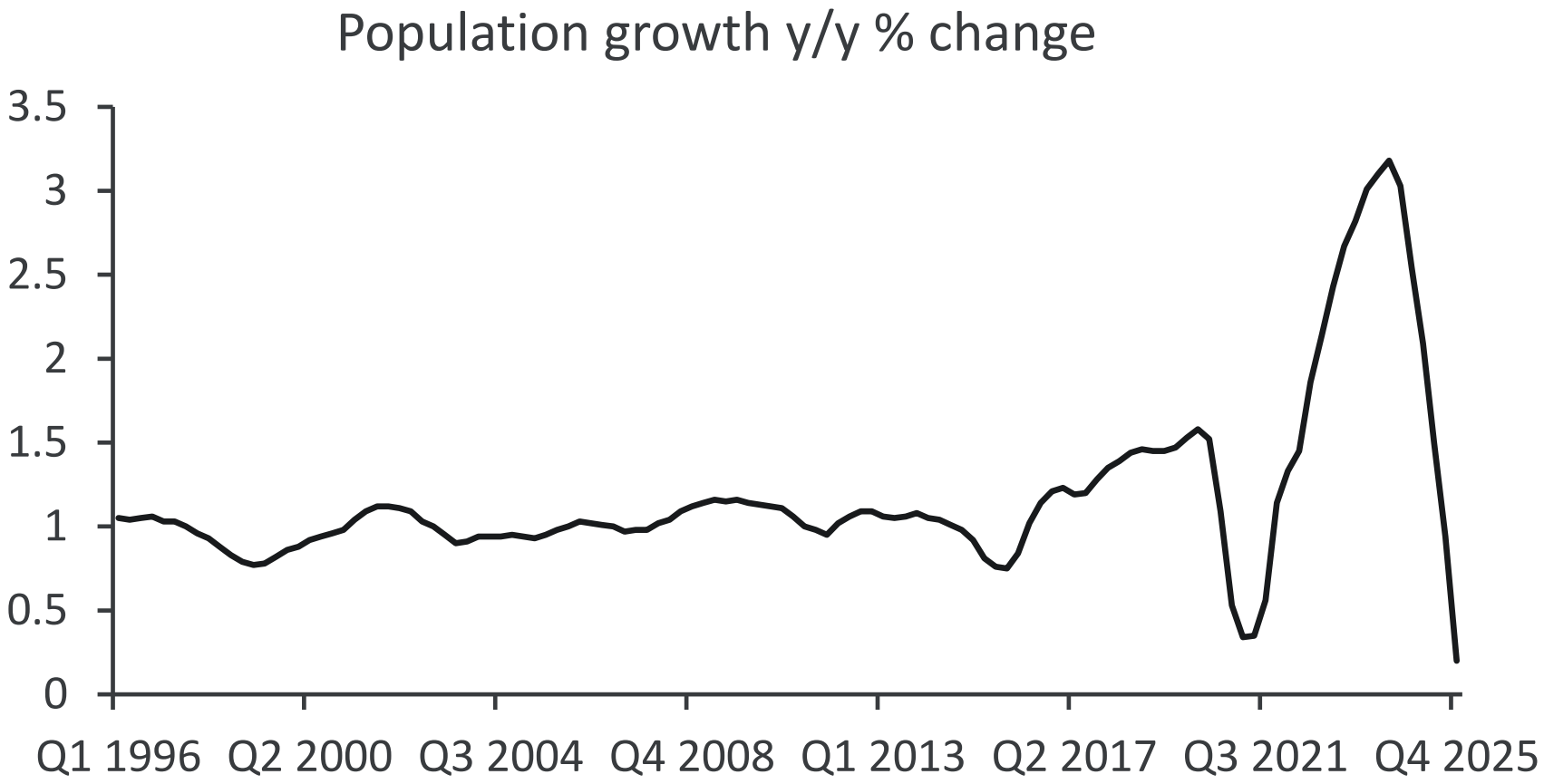




Source: Trans Union, CIBC

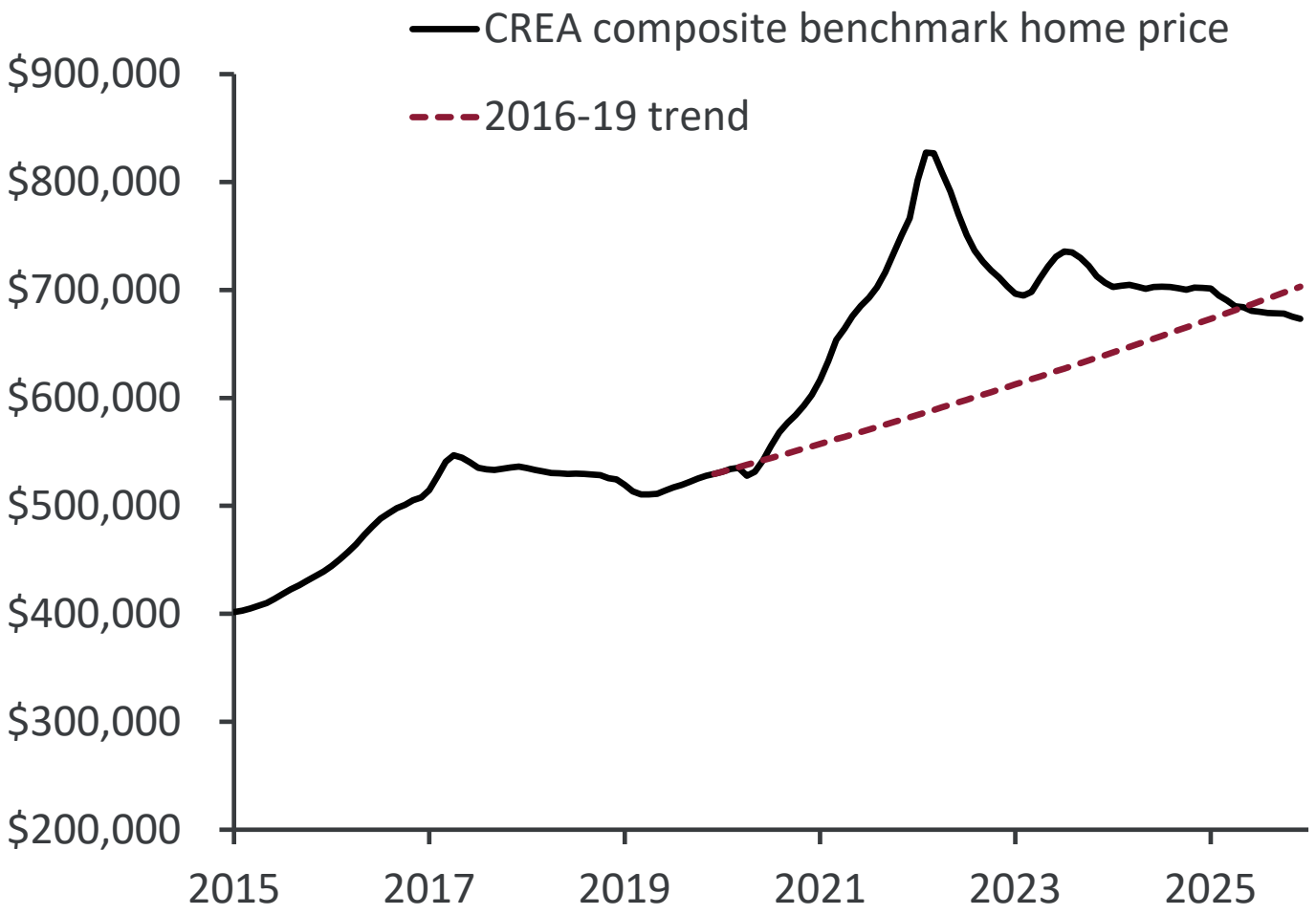
CIBC

Easy come easy go



Source: Statistics Canada, CIBC

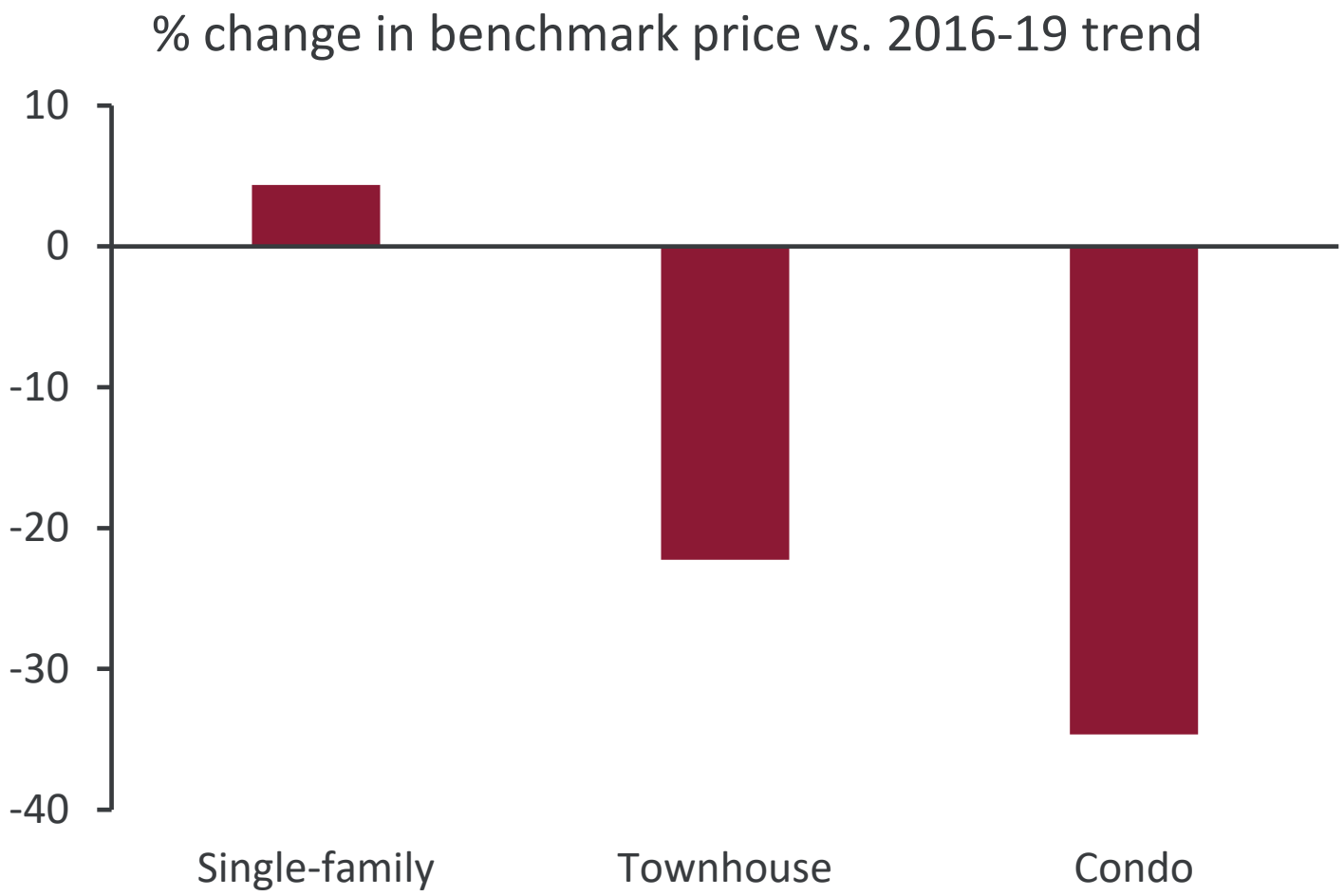
National benchmark home price close to pre-Covid trendline



Source: CREA, CIBC

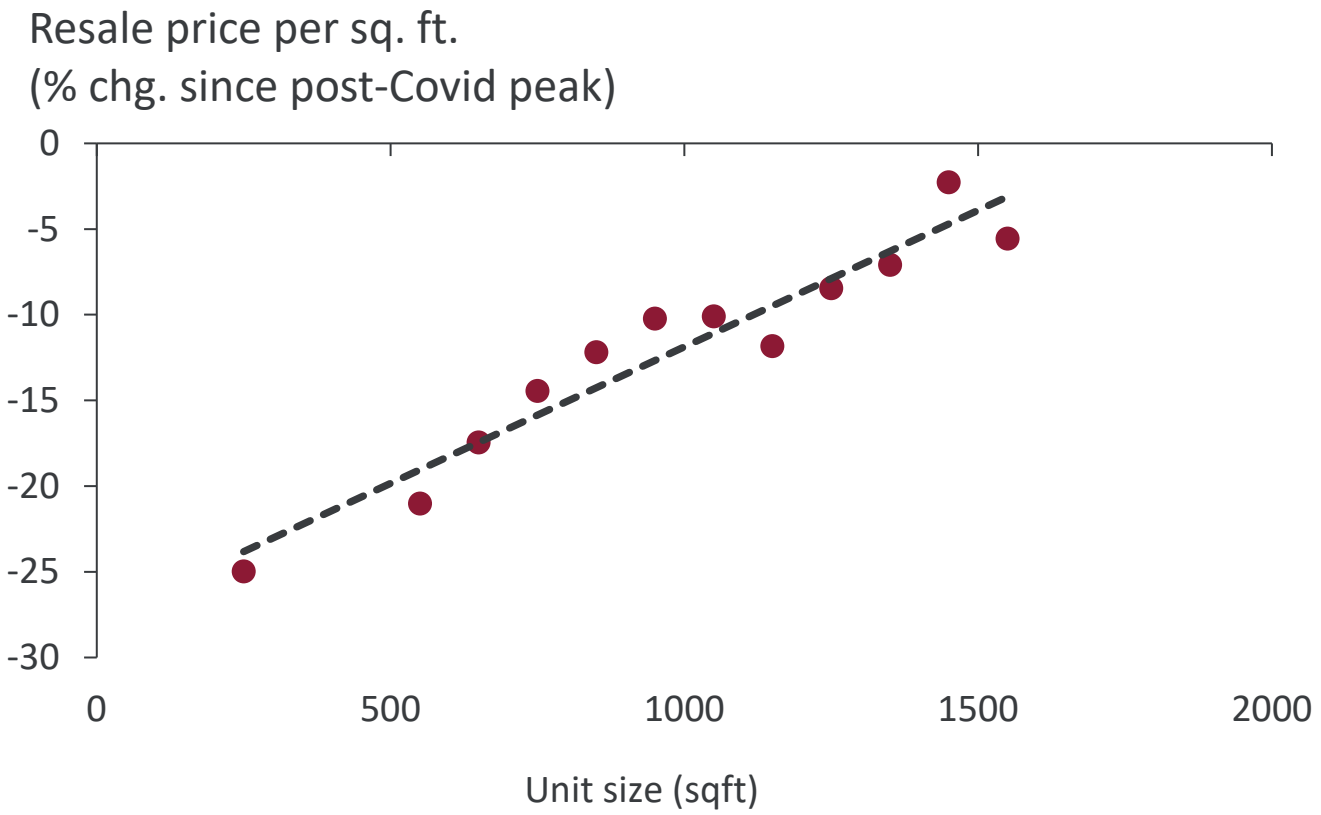
CIBC

Hit to prices felt the most in condo segment



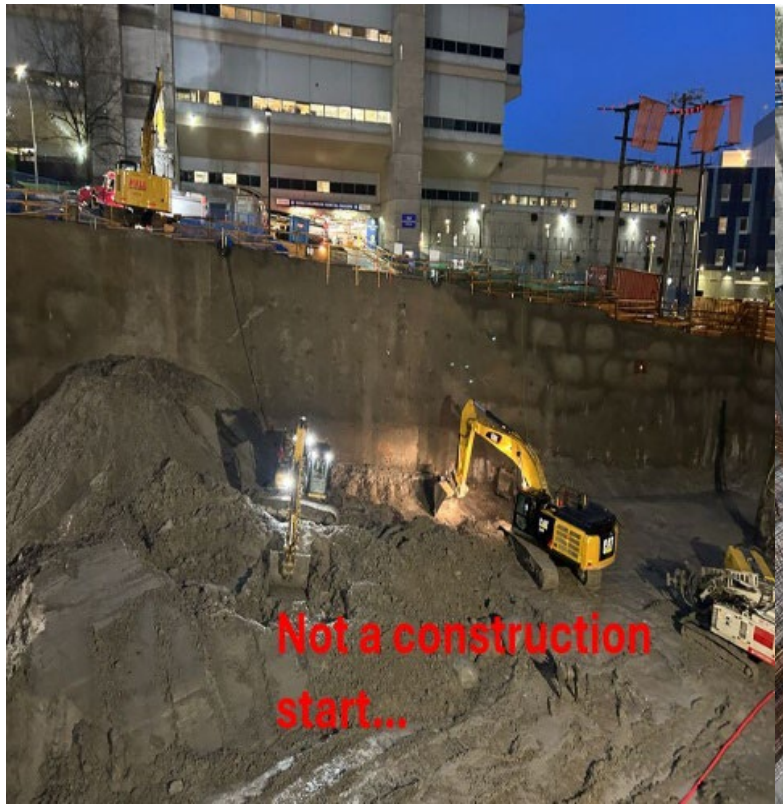
Source: CREA, CIBC

The smaller the unit the bigger the correction

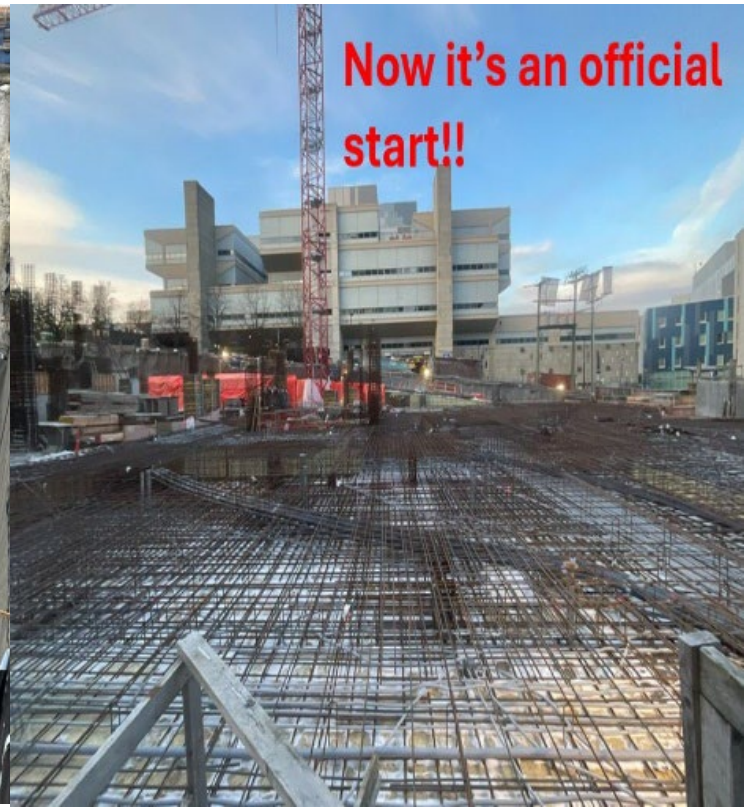


Source: CREA, CIBC

CMHC's definition of a housing start— way after the actual start

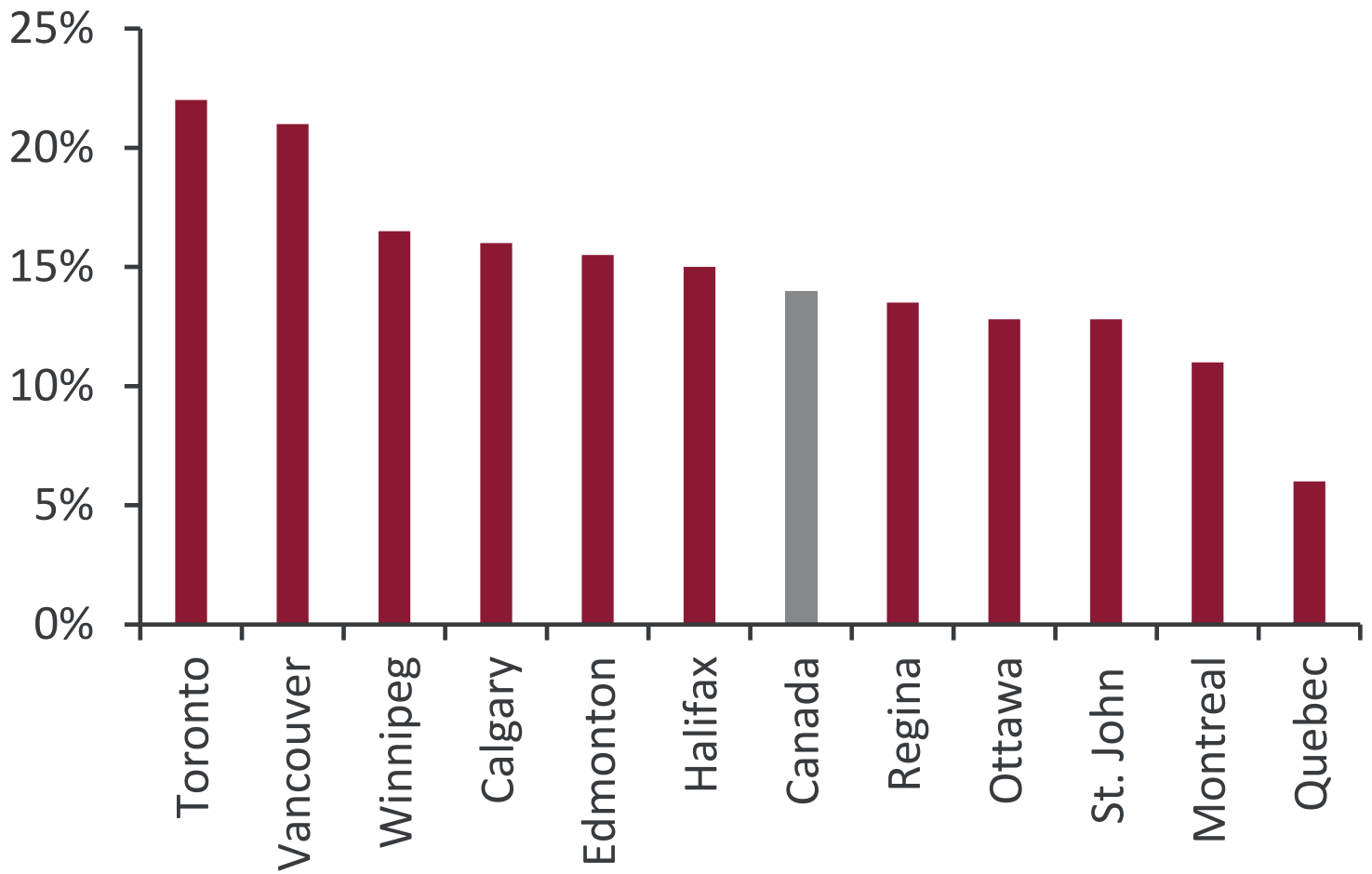






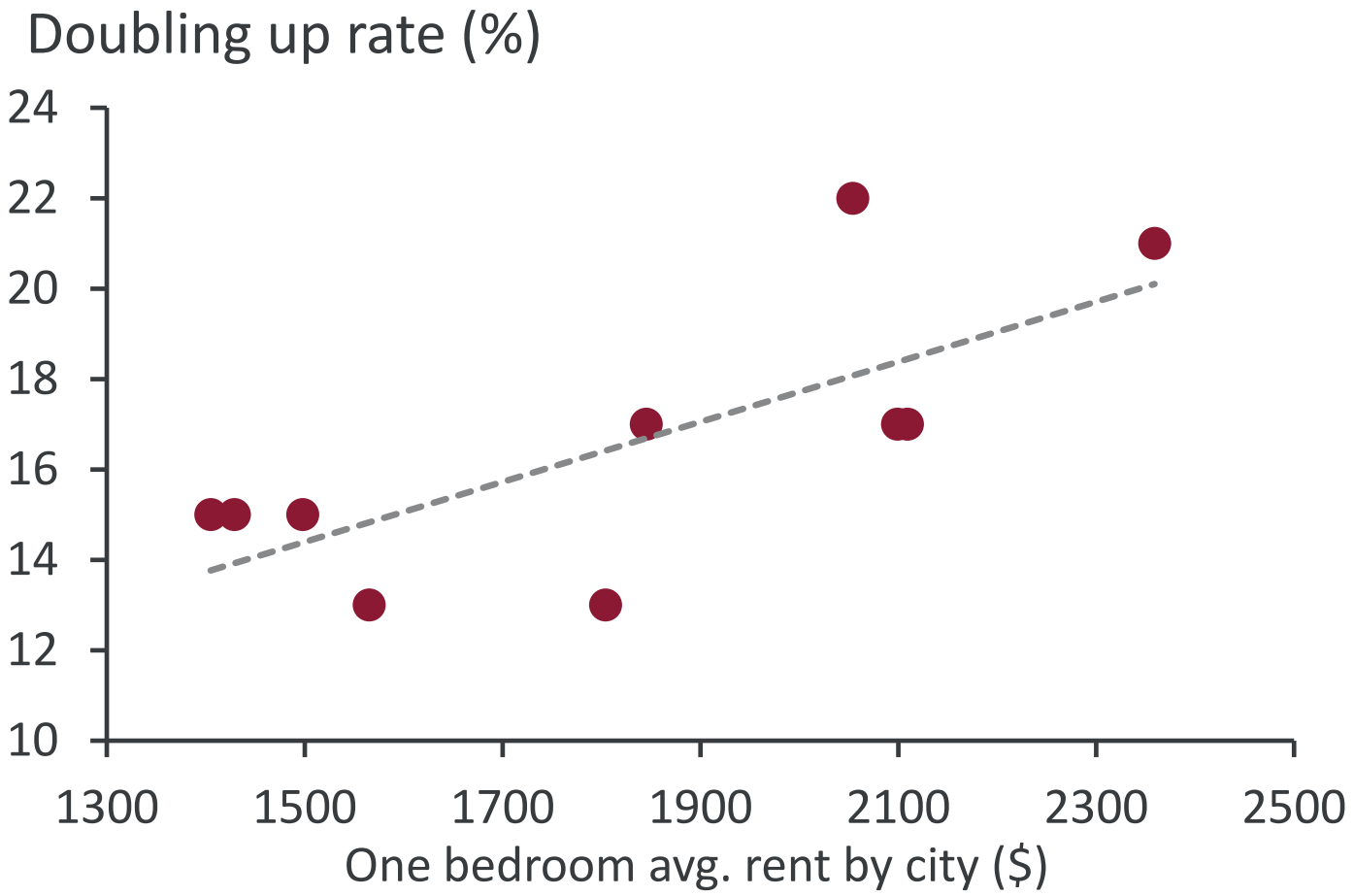
Source: Wes Group, CIBC

Doubling rate by city 2021



Source: Lauster and Bergmann

High positive correlation between doubling up and rents



Source: Lauster and Bergmann, StatCan, CIBC

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LANDPRO CONFERENCE 2026

PRESENTATION

STATE OF THE MARKET: TRENDS, VALUES, ACTIVITY

JEREMIAH SHAMESS

Executive Vice President, Sales Representative, Private Capital Investment Group, Colliers.

JASMINE YOUNG

Vice President, Advisory, Zonda.

07



TOPIC: STATE OF THE MARKET: TRENDS, VALUES, ACTIVITY

JEREMIAH SHAMESS

Executive Vice President, Sales Representative,
Private Capital Investment Group, Colliers.

Exclusively representing sellers of commercial real estate, as head of the Colliers Private Capital Investment Group—Ontario's top team for mid-market buildings and development land sales—he's built a reputation for strong execution, creative deal-making, and maximizing value. A three-time Everest Club inductee and 2021 #1 Investment Advisor in the GTA and #2 and #3 each year , Jeremiah's record includes the 2023 sale of Eastern Canada's largest development land site by price. His team's ability to turn unsolicited interest into full-value sell side outcomes is unmatched in the market. In 2025, Jeremiah and his team are concentrating on Receiverships, Power of Sale and distressed properties, with a proven track record of recovering credit, including sales for the Vandyke, Stateview & TAS to name a few.

Since 2016, Jeremiah has led middle-market investment transactions across the Greater Toronto Area, and downtown Hamilton, specializing in selling buildings and development land. With $2.17 billion sold and 214 transactions, Jeremiah focuses on helping property owners achieve their goals through a structured, transparent process. From apartment buildings, retail plazas and office buildings to urban development sites, he brings clarity, urgency, and focus to every deal.

Colliers

State of the Market

GTA Residential Development Land Market Update: LandPro 2026

April 2026



Jeremiah Shamess
Executive Vice President Private Capital Investments Group
+1 647 884 5449
Jeremiah.Shamess@colliers.com

Private Capital Investment Group

Colliers

State of The Market

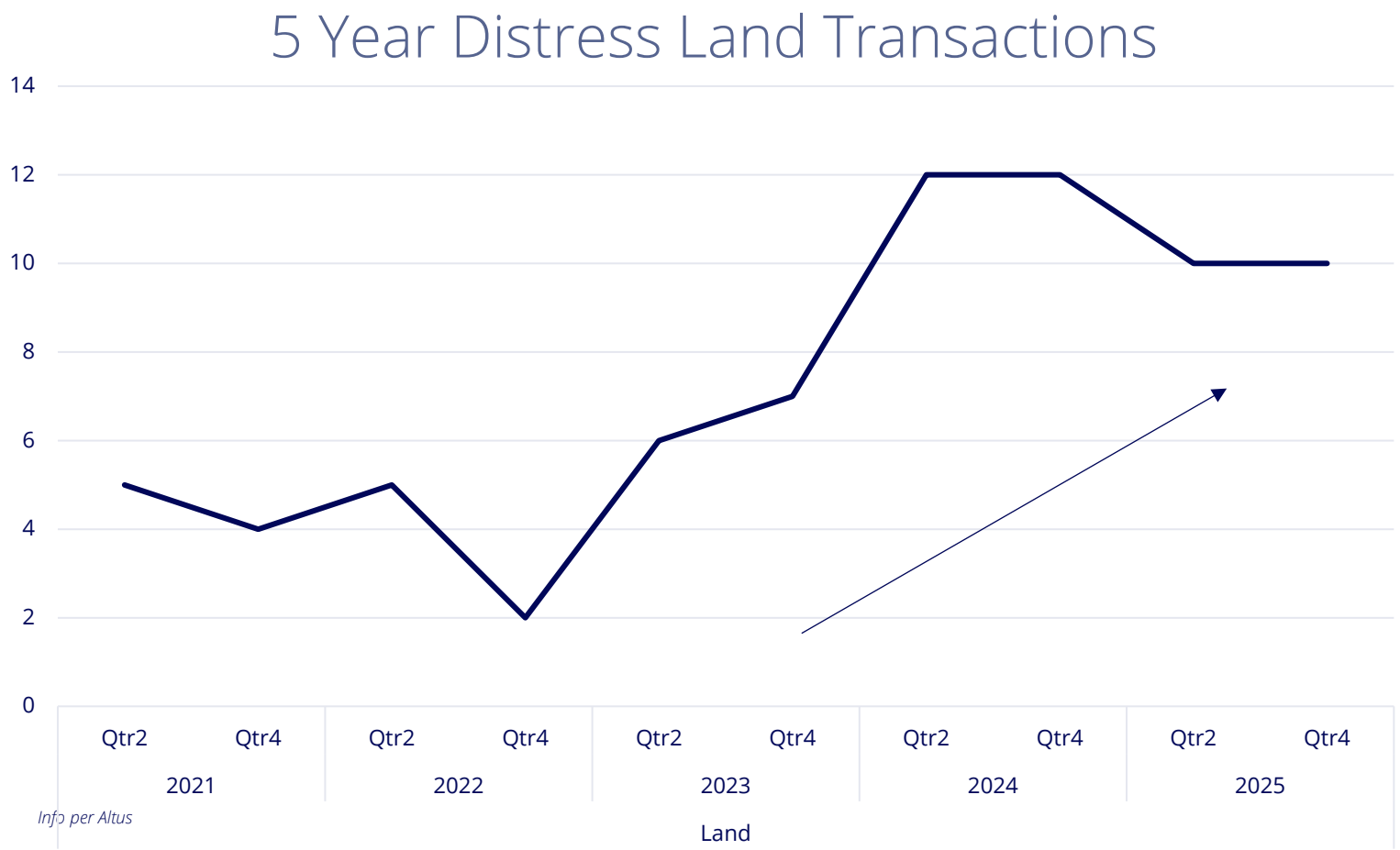
GTA Distress Market



Colliers

Residential Land - GTA

Distress Brewing In Land Market



GTA Land:

- Highly sensitive to interest rates, peaking at ~$751M in 2024 as rising borrowing costs squeezed overleveraged landowners
- Sharp pullback to ~$374M in 2025, though overall distress levels remain relatively
- The market has retained roughly a 15%-17% total distressed in the market
- Pricing down to peak 60-70% in high density land
- Context as compared to US - Great Financial Crises. Peak distressed markets were 67-76% of the total market, with pricing down 70-90%

Residential Land - GTA

Distress Across All GTA Markets

GTA Distress Sales Volume Last 5 Years



Info per Altus

Industrial:

- Sensitive to refinancing pressure, climbing from ~$60M (2021) to ~$130M (2024) as over-leveraged assets struggled with higher carrying costs
- Slight pullback to ~$95M in 2025 suggests distress is stabilizing, though overall volume remains modest

Retail:

- Distress largely absent through 2023 before spiking to ~$110M in 2024 as landlords unable to refinance were forced to sell
- Held at ~$105M in 2025, indicating persistent but contained stress across the sector

Office:

- Pressured through 2021–2023 by weak fundamentals, with distress dropping to ~$20M in 2024 as buyer appetite for discounted assets grew
- Recovery to ~$40M in 2025 reflects opportunistic purchasing rather than improving conditions

Apartments:

- Most resilient asset class throughout, with distress barely registering until a modest uptick to ~$15M in 2025
- Strong rental demand has insulated the sector, though stalled development and rising costs may drive future distress

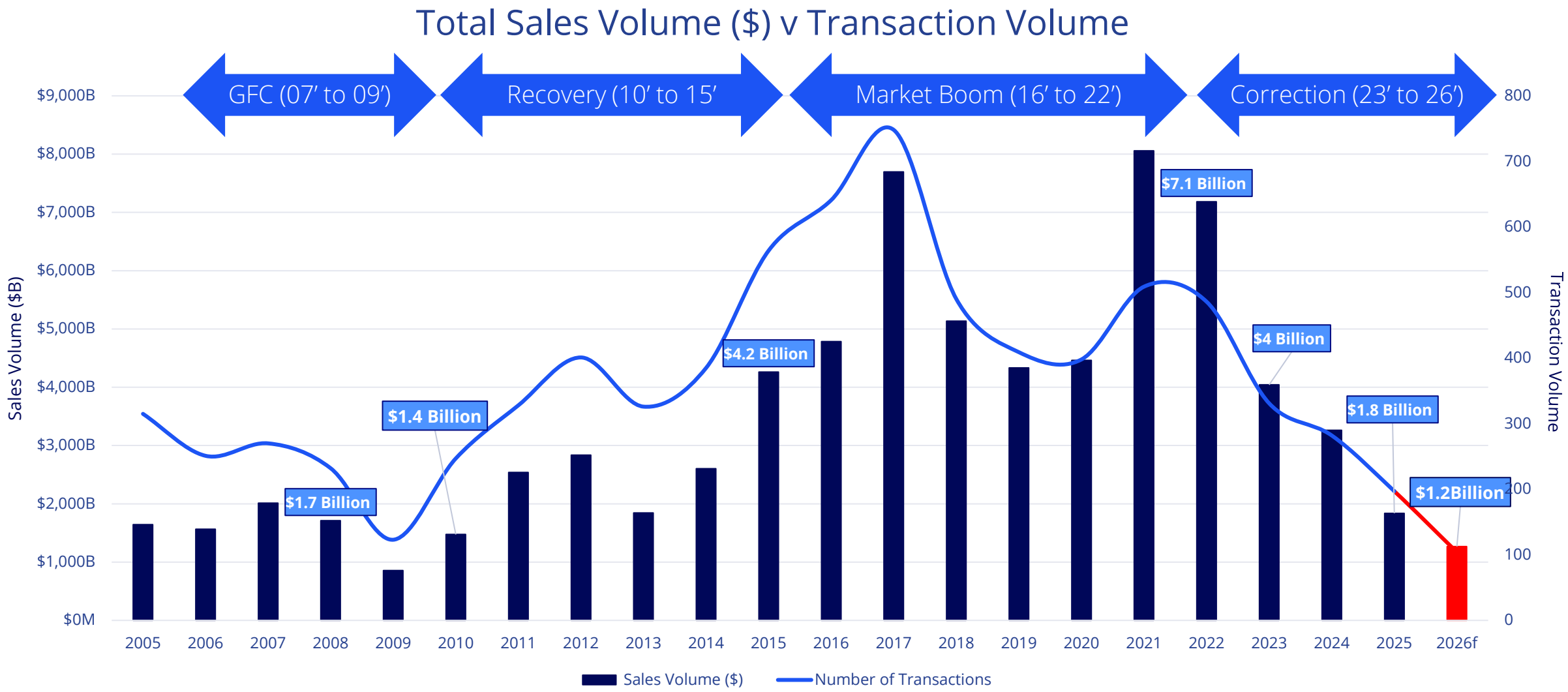
State of The Market

Regional Land Market Update: GTA

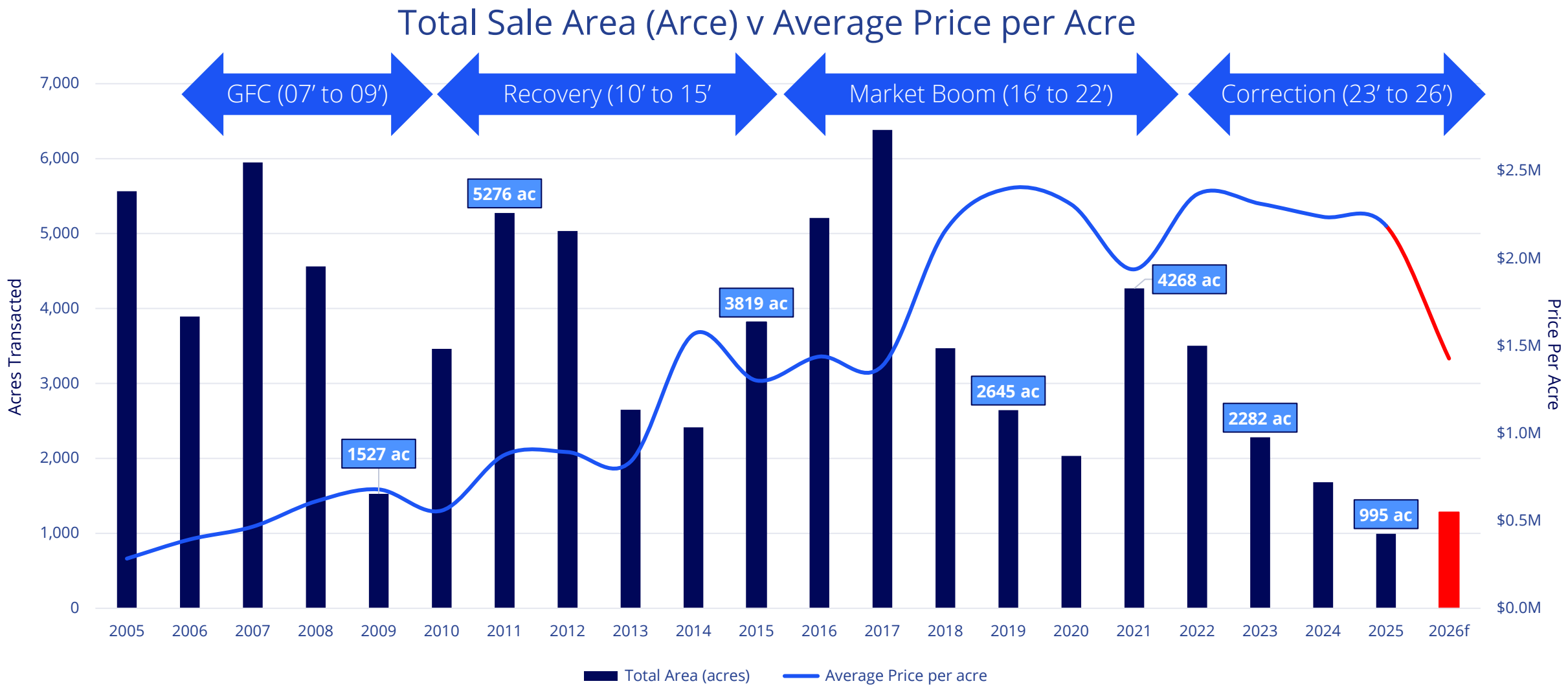


Colliers

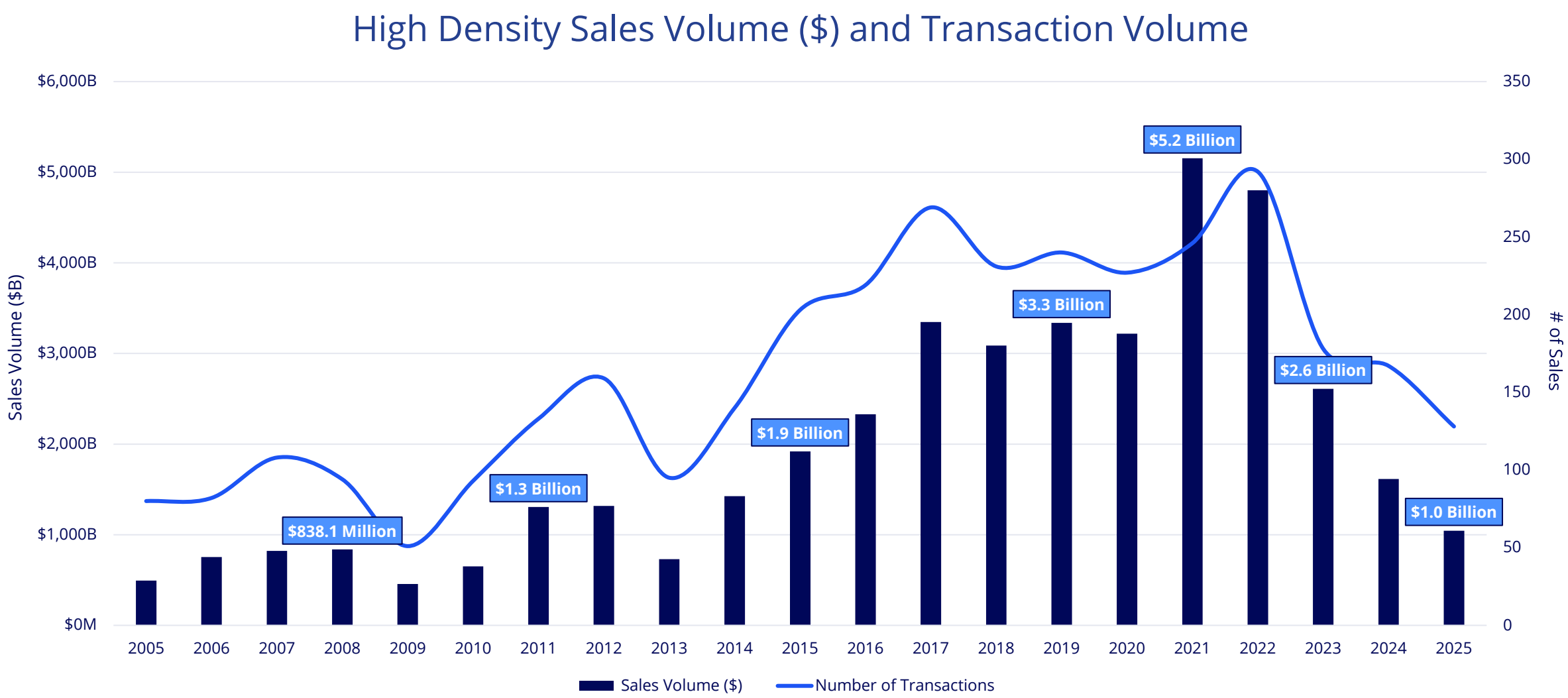
GTA Residential Land Volume & Sales (2005 – 2025)



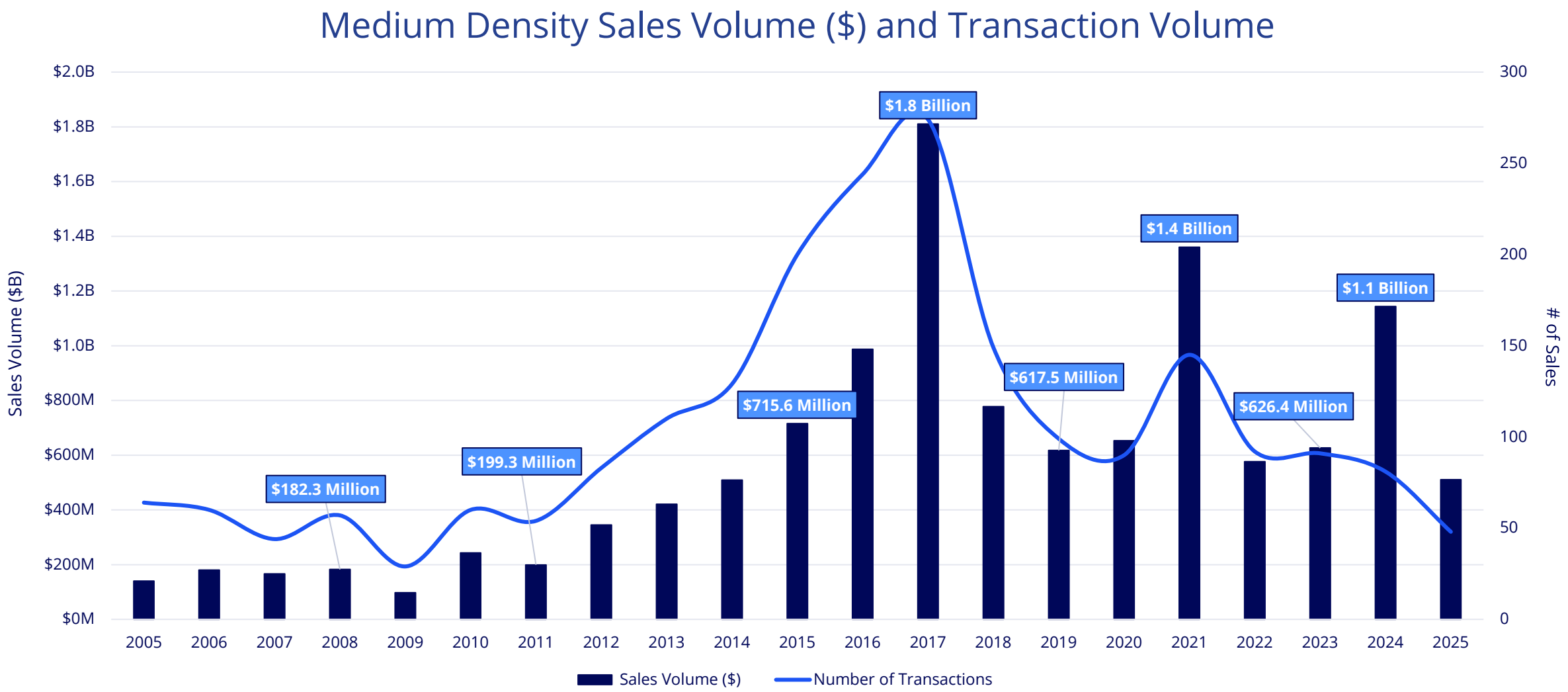
GTA Residential Land Volume & Sales (2005 – 2025)



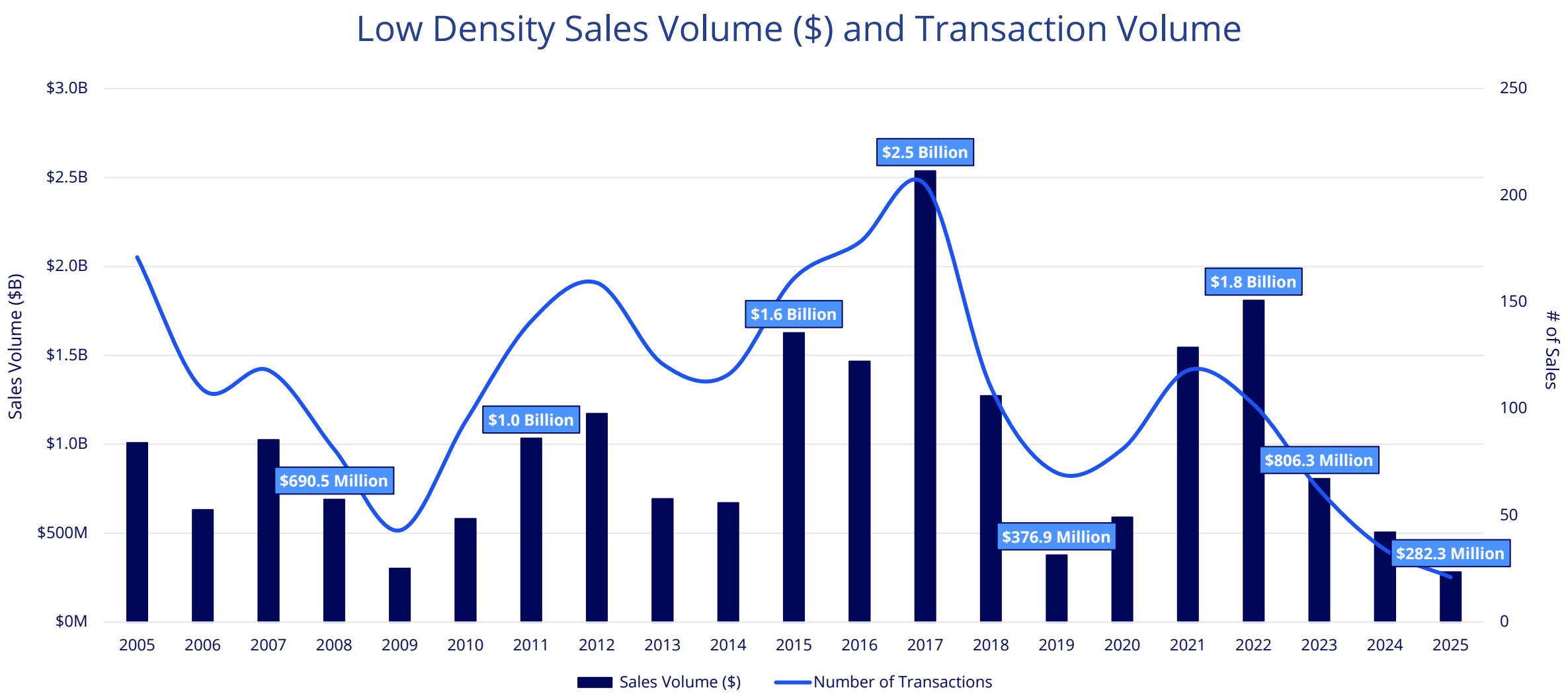
GTA High Density Land Volume & Sales (2005 – 2025)



GTA Medium Density Land Volume & Sales (2005 – 2025)



GTA Low Density Land Volume & Sales (2005 – 2025)



STATE OF THE MARKET

Jeremiah Shamess
Executive Vice President
Private Capital Investments Group
+1 647 884 5449
Jeremiah.Shamess@colliers.com

colliers.com

Colliers International
181 Bay Street, Suite #1400
Toronto, ON
+1 416 777 2200
collierscanada.com

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TOPIC: STATE OF THE MARKET: TRENDS, VALUES, ACTIVITY

JASMINE YOUNG

Vice President, Advisory, Zonda.

Jasmine Young is an expert residential market analyst and the Vice President of Advisory (Canada). Young served a decade as a Partner at N. Barry Lyon Consultants Limited, a leading real estate advisory firm in Toronto. Prior, she spent ten years as a Market Analyst. She specializes in providing market analysis and strategic advice for new residential developments across Canada. Young is a member of the Urban Land Institute and in 2019, was selected by the Toronto Chapter as a Women's Leadership Initiative Champion in recognition of being an influential woman in real estate development, land use, and city-building.

RESIDENTIAL MARKET OUTLOOK

Land Pro
April 1, 2026

Jasmine Young
Vice President, Advisory

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Market Demand Fundamentals

Zonda Urban

Current Climate : By The Media



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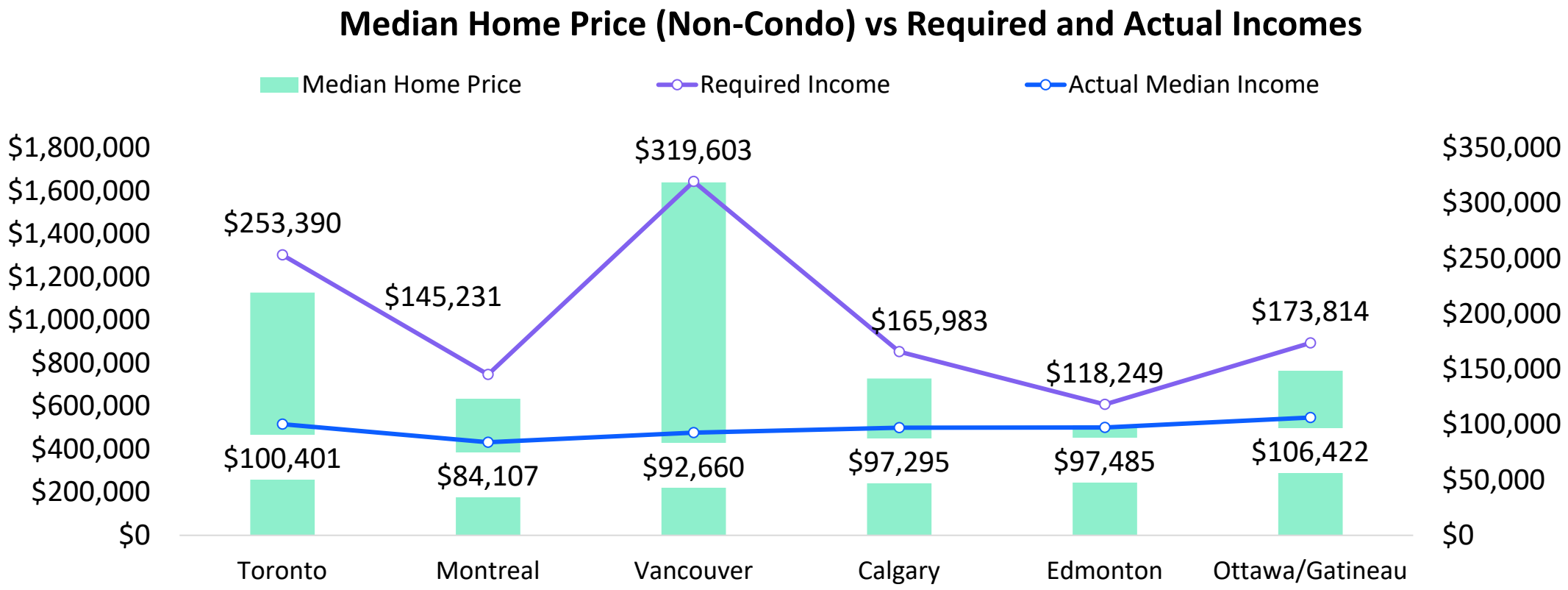
Housing Affordability



Source: National Bank of Canada

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Housing Affordability

Pricing Comparison by Product Type						
	GTHA	**Vancouver**	**Calgary**	**Edmonton**	**Montreal**	**Ottawa**
Concrete Condominium Apartments						
Avg $	$799,078	$1,110,969	$1,099,389	$766,060	$564,895	$701,589
Avg SF	687	840	1117	2229	930	857
Avg $PSF	$1,161	$1,321	$909	$1,063	$615	$773
Wood Frame Condominium Apartments						
Avg $		$686,474	$419,694	$384,407	$644,527	
Avg SF		751	841	949	1153	
Avg $PSF		$917	$501	$392	$559	
Townhouse Projects						
Avg $	$1,074,081	$1,098,352	$575,407	$484,366	$706,106	$626,641
Avg SF	1678	1449	1419	1397	1833	1599
Avg $PSF	$651	$786	$402	$339	$385	$395
End Pricing Differential by Type						
Wood Apart & Con Apart	**n/a**	**-38%**	**-62%**	**-50%**	**14%**	**n/a**
Wood Apart & Towns	**n/a**	**-37%**	**-27%**	**-21%**	**-9%**	**n/a**
Con Apart & Towns	**-26%**	**1%**	**91%**	**58%**	**-20%**	**12%**

Source: zonda Urban

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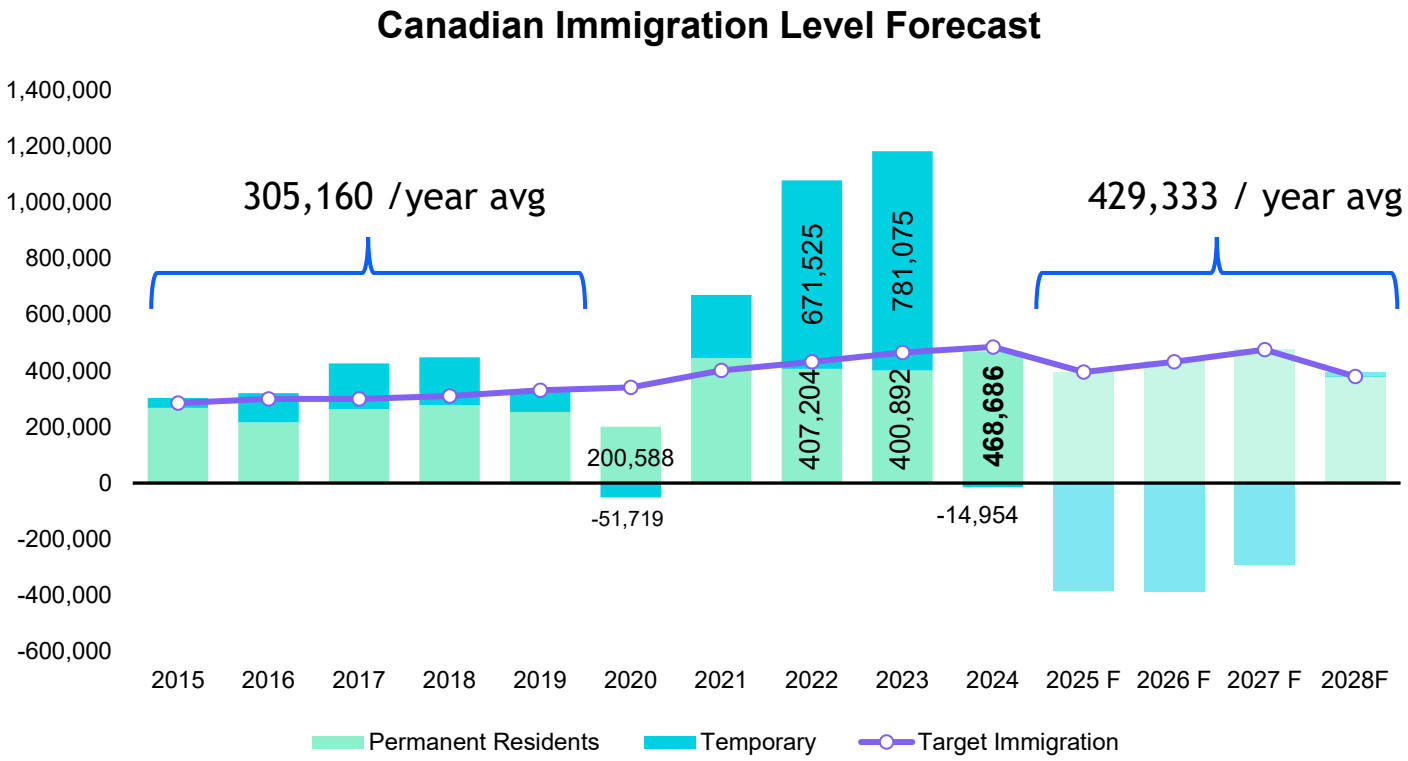
Immigration Targets & Forecast



Source: Immigration and citizenship

- Permanent resident immigration targets for 2026 to 2028 are still higher than pre-COVID-19 targets (380,000 people vs 255,800 people).
- Ontario and Quebec expected to be the most populous provinces in Canada over the next 25 years.
- A one-time initiative to transition non-permanent to permanent residents in 2026 and 2027 includes 148,000 total temporary residents currently living in Canada.

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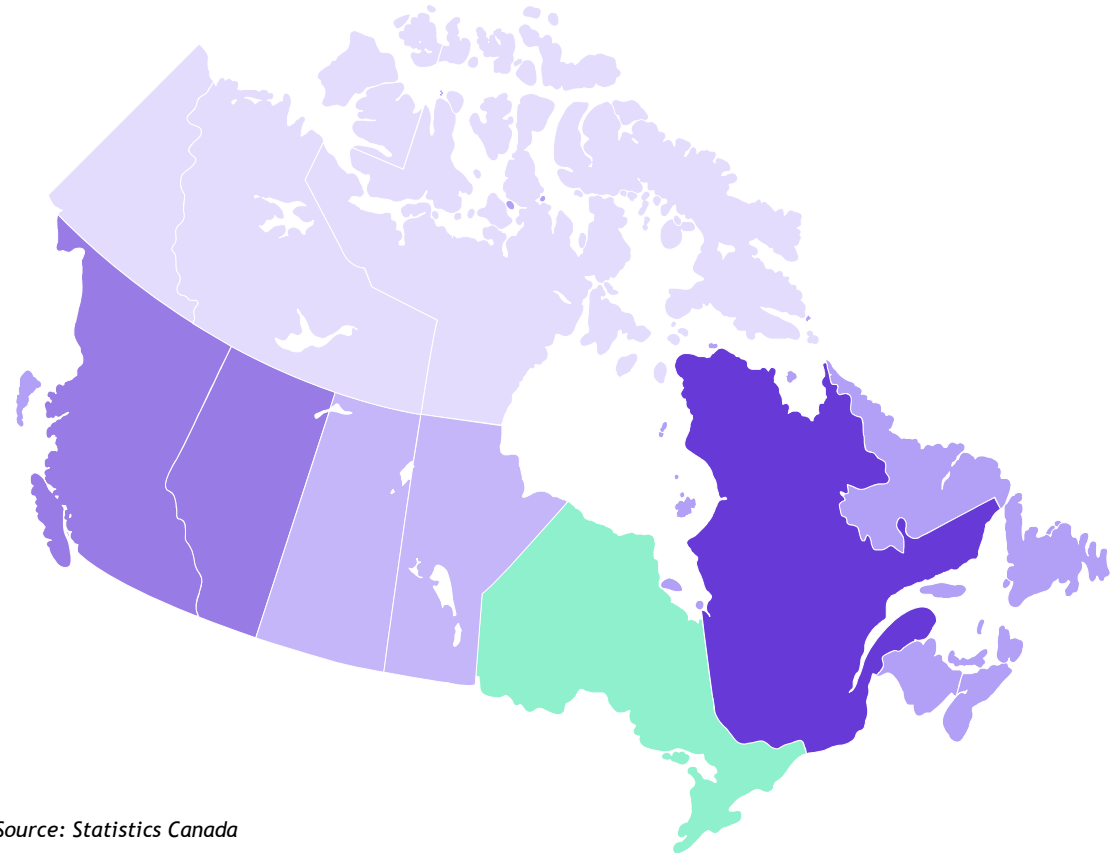
Interprovincial Migration – to Ontario



Source: Statistics Canada

Interprovincial Migration to Ontario, 2025

Province	#	%
Maritimes	17,856	22%
Quebec	12,571	15%
Manitoba	5,146	6%
Saskatchewan	4,241	5%
Alberta	24,762	31%
British Columbia	16,084	19%
Territories	1,069	1%
Total Interprovincial	**82,729**	**100%**

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Ontario Investment

2025

JANUARY

AstraZeneca
- $820 million
- 700 jobs

LINAMAR
- $1 billion
- 2,300 jobs

MARCH

SIEMENS
- $150 million
- 90 jobs

MINTH
- $300 million
- 1,099 jobs

APRIL

FERRERO
- $445 million
- 500 jobs

MAY

HGS HINDUJA GLOBAL SOLUTIONS
- 150 jobs

AUGUST

RANOVUS
- $100 million
- 125 jobs

SEPTEMBER

Electra Battery Materials
- $100 million
- 125 jobs

NORTHERN TRANSFORMER
- $206 million
- 151 jobs

ELEMENT5 MODERN TIMBER BUILDINGS
- $107 million
- 150 jobs

CHAPMAN'S
- $200 million
- 200 jobs

NOVEMBER

Vianode
- $3.2 billion
- 300 jobs

DECEMBER

SANDVIK
- $85 million
- 60 jobs

LEE LI HOLDINGS 利利集團
- $533 million
- 275 jobs

MARVELL
- $238 million
- 350 jobs

AtomVie Global Radiopharma
- $150 million
- 70 jobs

Source: Invest Ontario

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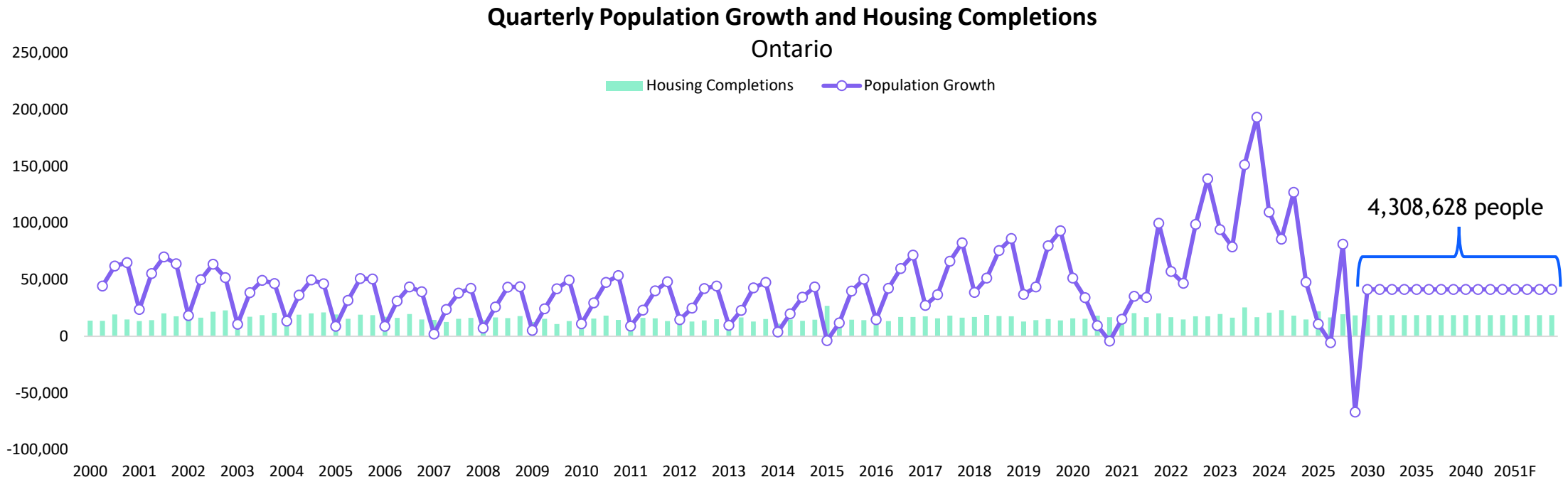
Demand and Supply Imbalance



Source: Statistics Canada and CMHC

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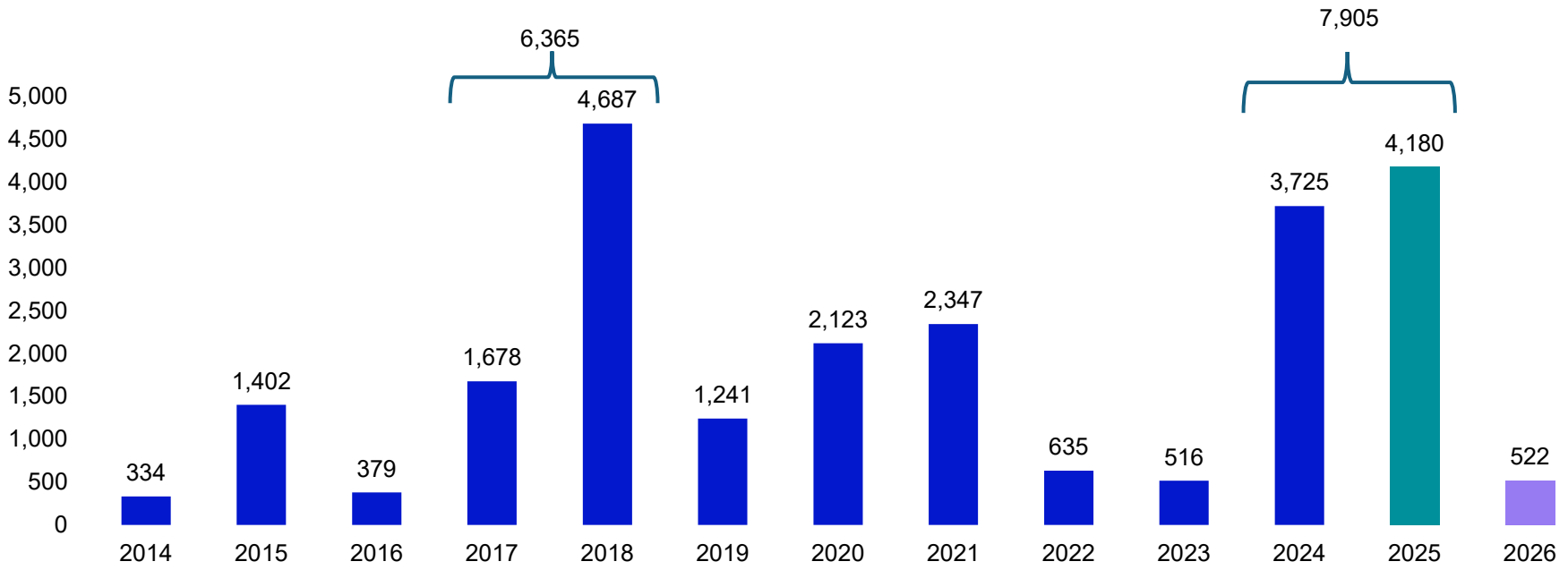
Apartment Project Cancellations



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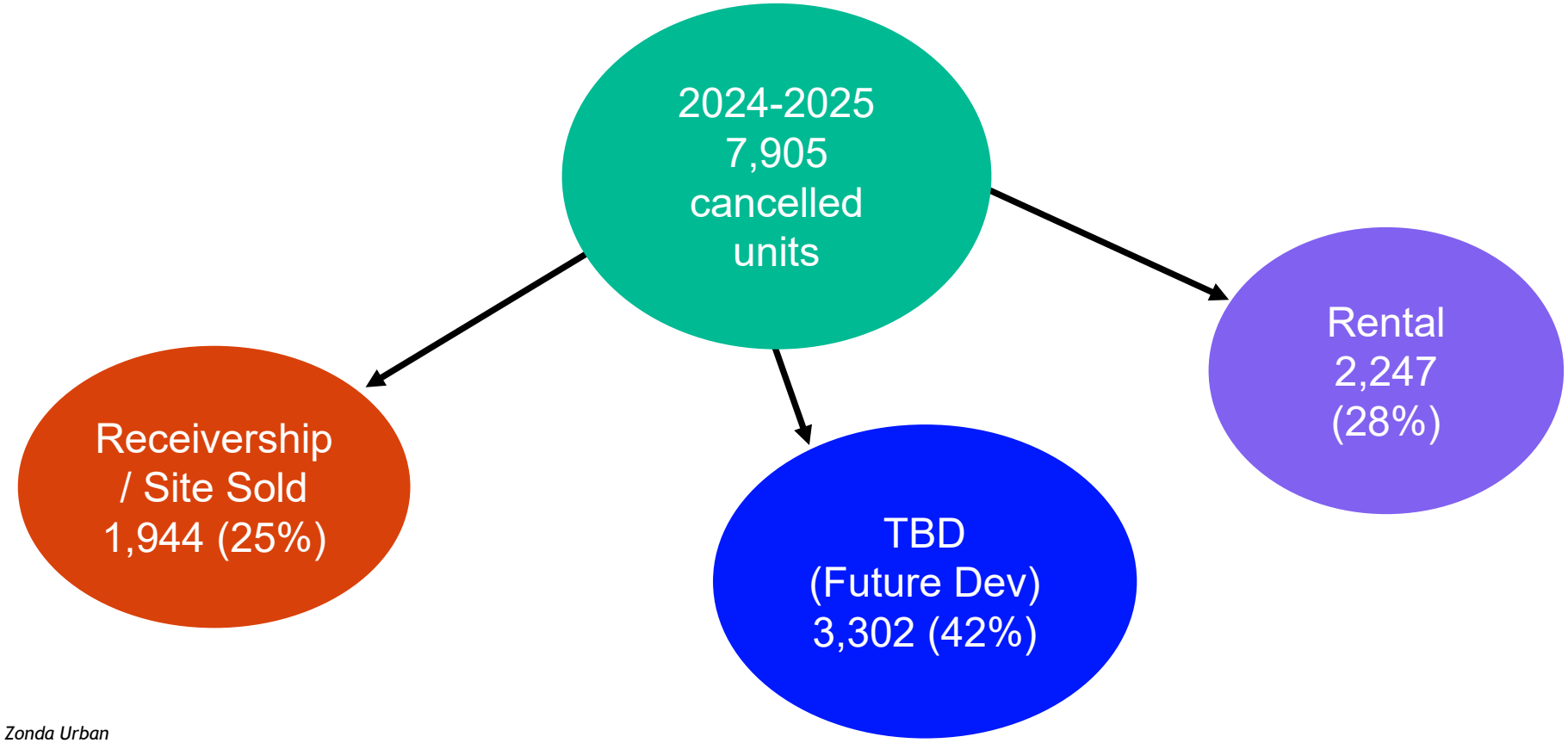
Apartment Project Cancellations



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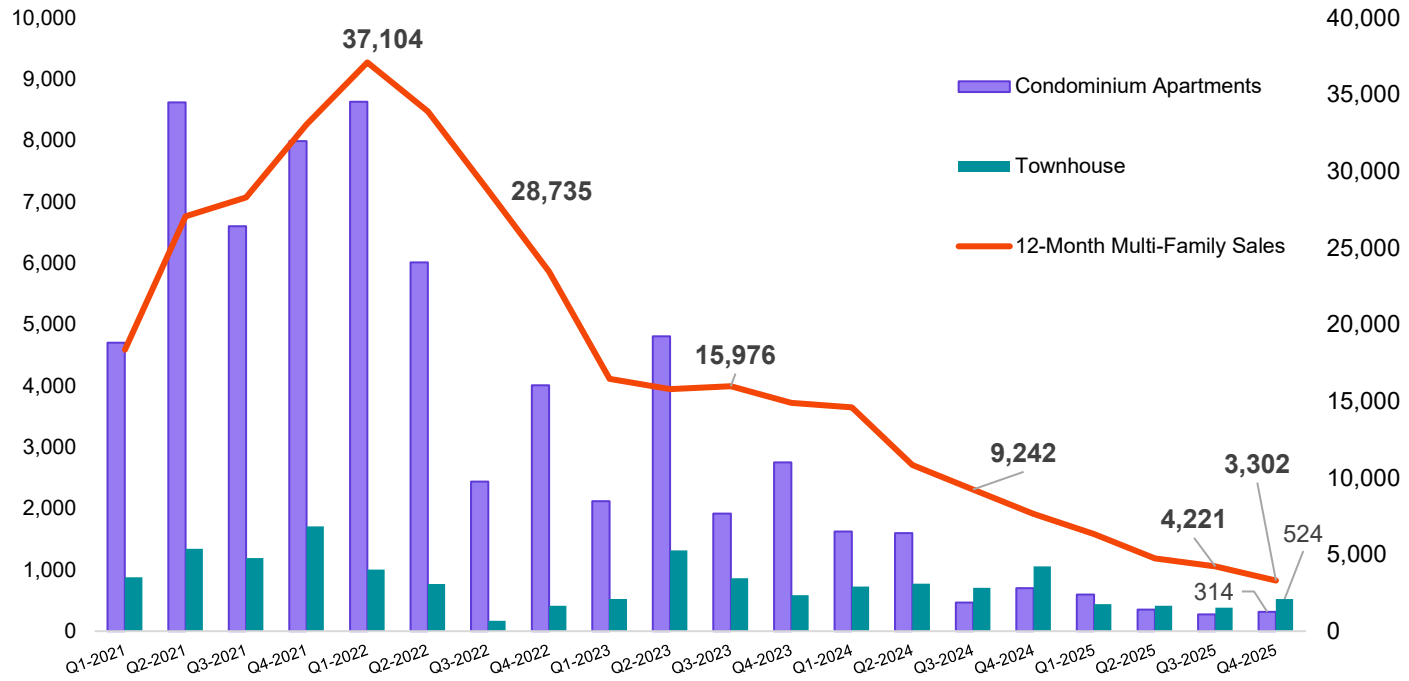
Multi-Family Home Sales - GTHA



- 2025: **3,302 total multi-family sales**
  - 1,539 Condominium Apartment
  - 1,763 townhomes

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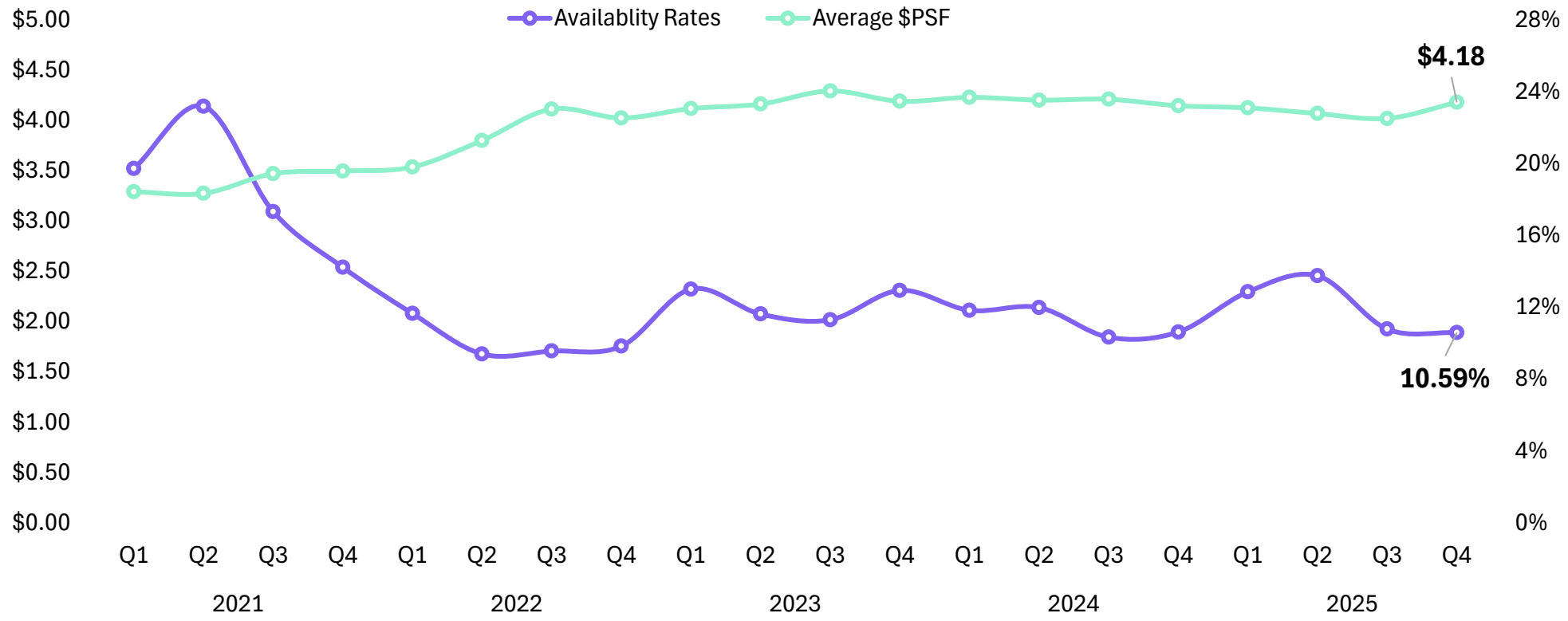
Rental Apartment Market - GTHA



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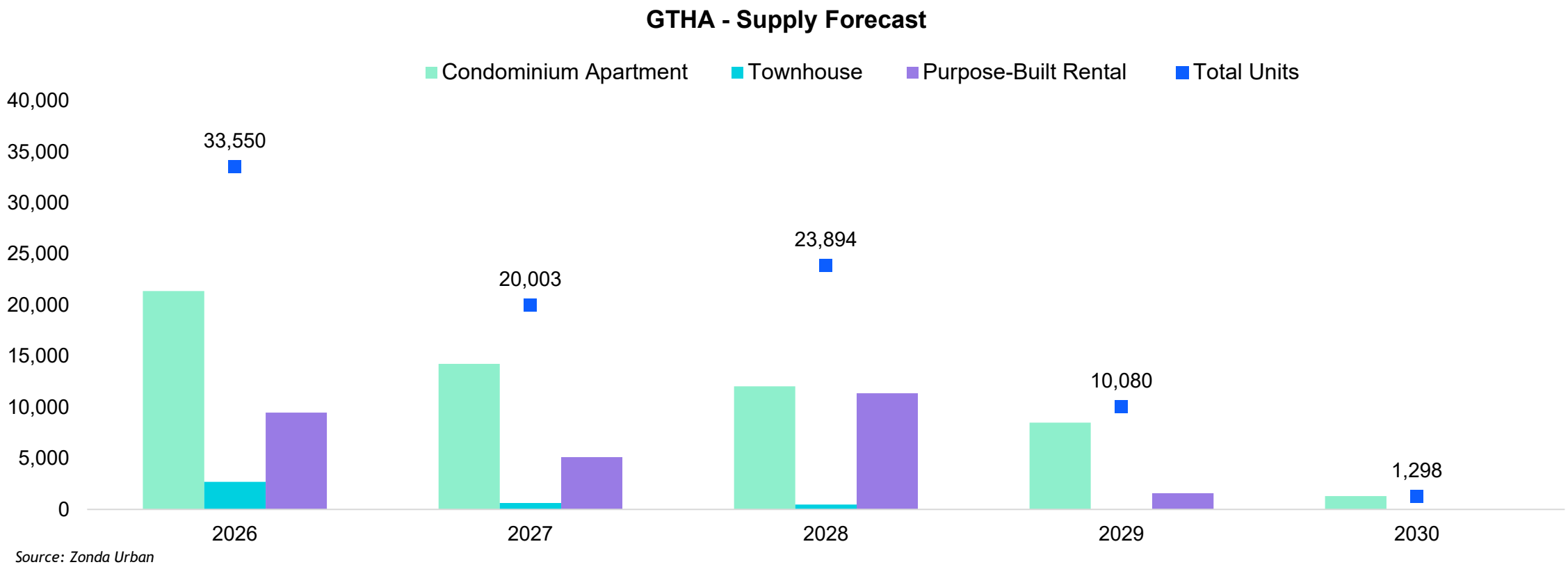
New Multi-Family Supply Forecast



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Opportunities: Lock-Off Suites





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Opportunities: Build-to-Rent

Build-to-Rent
– The Two Product Types Defined

Conventional Single-Family



- Typically, single-family homes on individual legal lots
- 3-4 bedrooms, private yards, one/two stories, garages
- Significant family renters with schools as a top concern
- Owner could sell some or all units individually
- Does not typically compete with for sale or apartments

Cottage Style



- Primarily cottage-style homes
- 1-3 bedrooms, smaller yards, surface parking
- Significant millennial and empty-nester renters
- Built on a single legal lot (cannot sell units individually)
- Does not compete with for sale, but can with apartments
- Traffic counts are important (like with apartments)

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Opportunities: Alternate Built Forms











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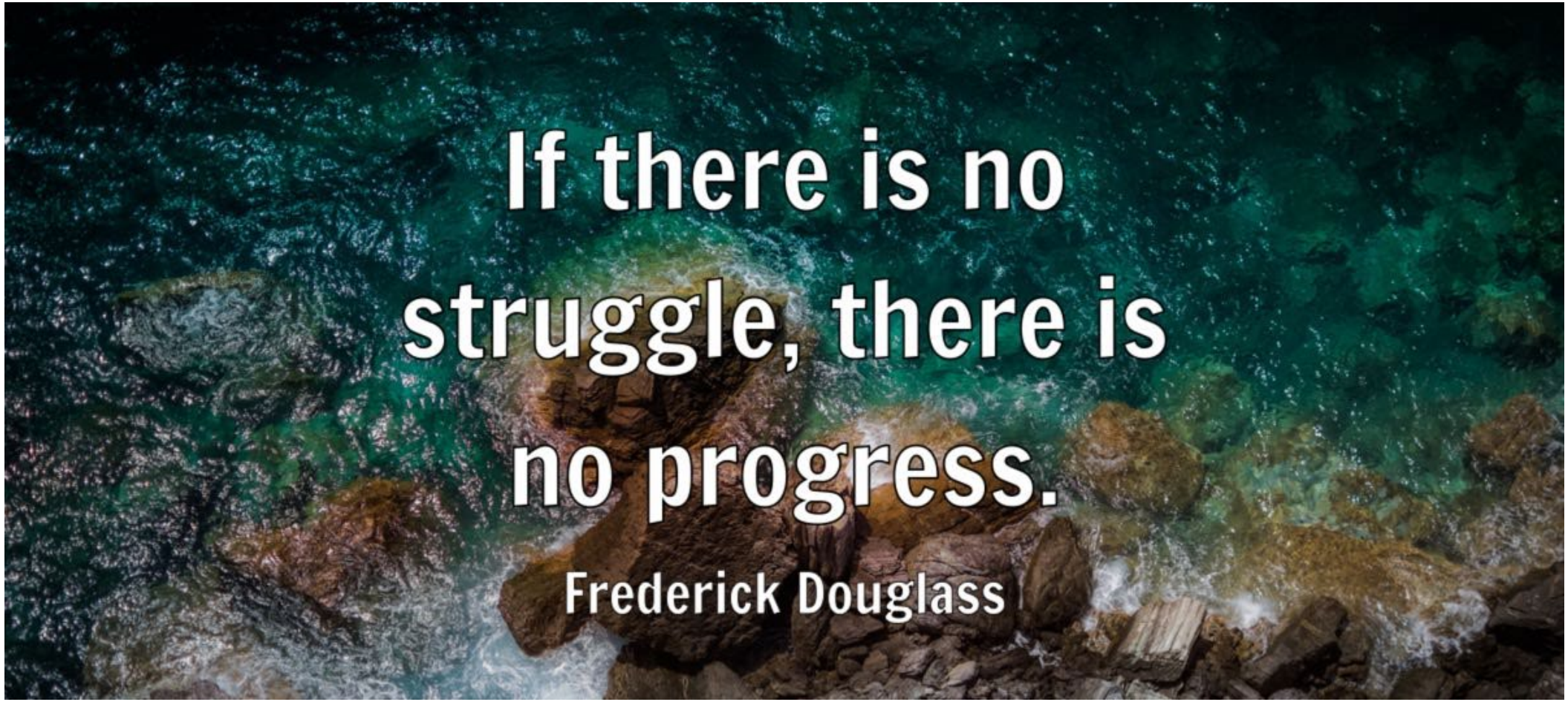

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Jasmine Young
Vice President, Advisory
jyoung@zondahome.com

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LANDPRO CONFERENCE 2026

PRESENTATION

LEGAL HOT TOPICS: RELIEF FROM FORFEITURE

HARRY HERSKOWITZ
Managing Partner, DelZotto, Zorzi LLP.

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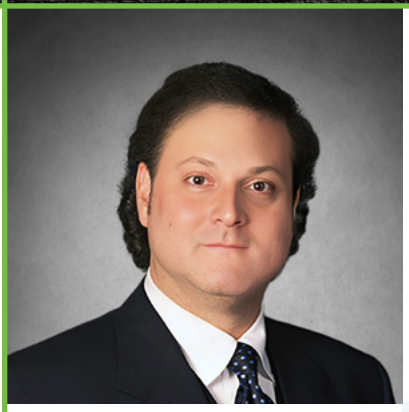

TOPIC: LEGAL HOT TOPICS: RELIEF FROM FORFEITURE

HARRY HERSKOWITZ

Managing Partner, DelZotto, Zorzi LLP.

Harry Herskowitz is a graduate of Osgoode Hall Law School and was called to the Bar of Ontario in 1979. Harry is qualified as an arbitrator/mediator, having completed a course in arbitration/mediation at the University of Toronto's School of Continuing Studies in 1994.

Harry's practice is devoted to real estate, mortgage lending and commercial transactions, with emphasis on land development and condominium law. Harry's practice also includes arbitrating disputes involving commercial real estate transactions and condominium issues, and providing legal opinions on various aspects of real property law.

Harry has represented numerous subdivision and condominium developers throughout Ontario, from simple stand-alone residential projects to complex mixed-use, multi phased and leasehold condominium projects. Harry is qualified as an expert witness before the Ontario Superior Court of Justice, and frequently provides opinions on real estate conveyancing and condominium issues.

PART ONE

ABORTED REAL ESTATE TRANSACTIONS IN A DECLINING MARKET – RECENT DECISIONS OF THE ONTARIO COURTS

BY HARRY HERSKOWITZ & AMY CRYSTAL – DELZOTTO, ZORZI LLP

*Originally presented at the Law Society of Ontario's Six-Minute Real Estate Lawyer Program in November 2019, and updated and supplemented for the Ontario Bar Association's legal conference held in Niagara Falls on September 12th to 14th, 2025, and to be presented at the 2026 LandPro Conference held on April 1st, 2026

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1. INTRODUCTION

More than two years have passed since the provincial government introduced a comprehensive set of measures to cool down (and reduce speculation in) the Ontario housing market, including the introduction of a new 15% non-resident speculation tax on the price of homes in the Greater Golden Horseshoe purchased by individuals who are not citizens or permanent residents of Canada.[1] Following such government intervention, the housing market in the Greater Toronto Area experienced a rapid and significant decline, and consequently countless homebuyers sought to resile from their respective purchase transactions, as they were either unable to sell their own homes at the prices for which comparable properties had sold at the peak of the market, or they were unable to obtain the requisite financing to complete their purchase transactions because the appraised values of their purchased homes were significantly lower than their respective purchase prices.

The shifting market conditions served as a stark reminder, for both purchasers and practitioners alike, of the potential liability of a defaulting purchaser in a declining real estate market. Unfortunately, many purchasers mistakenly believe that their liability is limited to the forfeiture of the deposit (as is often the case in a rising market), but the exposure to damages in a falling market is a real and substantive concern.

The purpose of this paper is to revisit the law regarding deposits, and to highlight a number of recent Ontario cases involving aborted real estate transactions that were spawned by the declining housing market in the spring of 2017.

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[1] The provincial initiatives were further compounded by the federal government's subsequent implementation, in 2018, of more stringent qualifications for mortgage loans issued by Canadian chartered banks and trust companies, and specifically the requirement that all homebuyers applying for a mortgage loan from a federally-regulated lender must demonstrate their ability to carry a mortgage for the same principal loan amount, but at an interest rate that is the greater of 2% above their contracted rate and the five-year benchmark mortgage rate published by the Bank of Canada.

2. A PRÉCIS OF THE LAW REGARDING DEPOSITS

(a) The Purpose of the Deposit

At common law, it is well established that a purchaser of land who fails to complete the purchase and sale transaction stands to lose his or her equitable estate or interest in the land, as well as any deposit monies paid in connection therewith. The seminal case of *Howe v. Smith*[2] confirmed that the purchaser's deposit serves two purposes: it is an "earnest" or guarantee that the contract will be performed by the purchaser, and it is also a prepayment of part of the purchase price. The prospect of the deposit's forfeiture provides an incentive for the purchaser to perform his or her obligations under the contract. If the transaction is completed successfully, then the deposit will correspondingly be applied as a credit towards the purchase price. Conversely, the deposit will generally be forfeited by a purchaser who repudiates the contract. A deposit that is ultimately forfeited to the vendor, consequent upon the purchaser's default, does not constitute damages for breach of contract, and is not dependent on the proof of actual damages incurred by the innocent vendor.[3] Rather, the deposit stands as security for the purchaser's performance of his or her contractual obligations, and can accordingly be forfeited to the vendor as his or her liquidated damages (and not as a penalty), but must be applied on account of any damage claim ultimately pursued by the innocent vendor against the defaulting purchaser.

At common law, a "true" deposit is, by its very nature, non-refundable,[4] unless the contract stipulates otherwise. Accordingly, in the absence of any express provision to the contrary, it is implicit that a deposit will be forfeited to the vendor if the contract is terminated because of the purchaser's default. The forfeiture of the deposit compensates the vendor for the lost opportunity

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[2] (1884), 27 CH. D. 89 (Eng CA).
[3] *De Palma v. Runnymede Iron & Steel Co.*, [1950] 1 D.L.R. 557, [1950] O.R. 1 at p. 8.
[4] A number of equitable principles have emerged regarding the restitution of contractual payments categorized other than as "true" deposits, such as installments, designations of funds as liquidated damages, and contractual penalties.

in having taken the property off the market in the interim, as well as the loss in bargaining power resulting from the revelation of the sale price of the property that the vendor was prepared to accept.[5] It is unnecessary for the agreement of purchase and sale to contain an express forfeiture clause, inasmuch as the vendor has the implied right at common law to retain the deposit monies in the event that the purchaser fails to complete the transaction, notwithstanding the fact that this might produce a windfall for the vendor (especially in a rising market).

(b) Relief Against Forfeiture

A deposit paid pursuant to a contract for the sale of land is an exception to the general rule that an amount subject to forfeiture resulting from a breach of contract is inherently penal in nature (and therefore illegal or unenforceable), unless such amount represents a genuine pre-estimate of the damages. A purchaser's deposit can therefore be validly forfeited even though the amount of the deposit bears no relationship or reference to the anticipated loss to the vendor flowing from the breach of contract.[6] It is, however, part of the court's equitable jurisdiction to grant relief against forfeiture in circumstances that it considers appropriate in order to achieve substantive justice. Section 98 of the *Courts of Justice Act*, R.S.O. 1990, as amended, has codified the longstanding doctrine against penalties, and gives the court the broad discretion to grant relief against forfeiture "on such terms as to compensation or otherwise as are considered just." The purpose of this form of relief is to prevent the vendor from being unconscionably overcompensated for the purchaser's breach of contract.

A purchaser seeking relief from forfeiture must satisfy two essential requirements: firstly, that the forfeiture of the deposit is penal in nature, in the sense that the sum forfeited was out of all proportion to the losses suffered by the vendor; and secondly, that it would be unconscionable

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[5] *H.W. Liebig Co. v. Leading Investments Ltd.*, [1986] 1 SCR 70 at para 33.
[6] *Workers Trust & Merchant Bank Ltd. v. Dojap Investments Ltd.*, [1993] A.C. 573 (PC) at p. 578.

for the vendor to retain the deposit monies under the circumstances.[7] Although freedom of contract and certainty in the marketplace dictate that a finding of unconscionability would be the rare exception, the court may nevertheless be persuaded by strong and compelling facts to grant equitable relief from forfeiture, such as evidence of a disproportionately large deposit being forfeited. However, the courts in Ontario have been reluctant to specify a numerical percentage that would, in and of itself, constitute a "grossly disproportionate" or excessive deposit, since much turns on the specific facts of each transaction.[8] In addition to the quantum of the deposit being forfeited, other indicia of unconscionability include an inequality of bargaining power, a substantially unfair bargain, a significant disparity in the relative sophistication of the contracting parties, the lack of bona fide negotiations, and the gravity of the breach of contract.[9]

Of course, in order to make an application for relief from forfeiture, the purchaser must be in default. If not, relief is unnecessary. Accordingly, if the contract is subject to a condition precedent that is not met, or if the contract is not formed because an offer is repudiated before acceptance, or if the vendor is in default, then all deposit monies paid by the purchaser must be returned.

(c) Calculation of the Innocent Vendor's Damages

Where the vendor's loss consequent upon the purchaser's default exceeds the aggregate amount of the deposit, then the vendor may be entitled to pursue a claim in damages against the defaulting purchaser. The common law provides that in the assessment of damages for breach of contract, the innocent party should be put in the position (or as close thereto as possible) as he or she would have been in had the contract been performed. However, in order to be recoverable, the

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[7] *Stockloser v. Johnson*, [1954] 1 QB 476.
[8] *Redstone Enterprises Ltd. v. Simple Technology Inc.*, 2017 ONCA 282 at para 28.
[9] *Ibid* at para 30.

losses or damages suffered must flow or result from the purchaser's repudiation of the contract and be: (i) reasonably foreseeable; (ii) proved with a sufficient degree of certainty; and (iii) unavoidable, in the sense that the innocent party cannot recover for losses that would (or could) otherwise have been avoided through reasonable mitigation efforts.

In the context of an aborted real estate transaction, it is generally accepted that the appropriate measure of damages for the innocent vendor's loss of bargain is the difference between the contract price and the market value of the land. Ordinarily, damages will be assessed at the date that the contract was to be performed (namely, the date of closing), but the court may choose a different date depending on the particular circumstances. In a falling market, the Court of Appeal has held that the vendor should be awarded damages equal to the difference between the contract price and the "highest price obtainable within a reasonable time after the contractual date for completion, following the making of reasonable efforts to sell the property commencing on that date."[10] The resale price of the property obtained by the vendor will, in most cases, constitute good and sufficient evidence of the market value of the property.[11] Where it is alleged that the vendor has failed to mitigate his or her damages, the onus of proof is on the purchaser to demonstrate, on a balance of probabilities, that the vendor failed to make reasonable efforts to mitigate, and that mitigation was possible. The vendor need not take any and all possible steps to reduce his or her loss. Rather, the vendor need only act reasonably (and not perfectly or flawlessly) in his or her mitigation efforts.

Finally, it is important to note that when a vendor elects to sue for the losses or damages incurred due to the purchaser's failure to close, the deposit monies must be credited towards any damage award against the repudiating purchaser, rather than being added thereto. It should also be

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[10] *100 Main Street East Ltd. v. W.B. Sullivan Construction Ltd.* (1978), 88 D.L.R. (3d) 1 (ONCA) at para 73.
[11] *Ibid* at para 67.

noted that the vendor may suffer other consequential losses as a result of the purchaser's breach of contract (for instance, legal fees and disbursements for the aborted transaction, additional realty taxes, utilities, real estate commissions, insurance costs, moving expenses, and additional marketing and staging costs). Generally, a claim for consequential losses must emanate from the purchaser's repudiation, and is subject to such factors as reasonable foreseeability, unavoidability, and adequate proof.

3. RECENT DECISIONS OF THE ONTARIO COURTS

(a) The Purchaser's Deposit Forfeited, Even Under a Pre-Incorporation Contract

(i) *Benedetto v. 2453912 Ontario Inc.*, 2019 ONCA 149

The purchaser entered into an agreement of purchase and sale to acquire from the vendor three adjacent residential properties located in Toronto, and the contract stipulated that the purchaser was executing the agreement "*in trust for a company to be incorporated without any personal liabilities*". The purchaser submitted a deposit in the amount of $100,000. Two weeks prior to the closing date, the purchaser advised the vendor that he would not be completing the transaction, and correspondingly sought the return of the deposit. The vendor refused, and ultimately brought a motion for summary judgment.

The motion judge held that the provisions of subsection 21(4) of the *Ontario Business Corporations Act*, R.S.O. 1990, as amended,[12] which address pre-incorporation contracts, do not displace the common law rules governing deposits in real estate transactions, and therefore concluded that the purchaser's deposit should be forfeited to the vendor as a consequence of the purchaser's default.

[12] Subsection 21(1) of the *Ontario Business Corporations Act*, R.S.O. 1990, as amended, provides that an individual who enters into an oral or written contract in the name of (or on behalf of) a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits thereof. However, pursuant to subsection 21(4), an individual will not be bound by the contract (nor entitled to the benefits thereof) if such contract expressly stipulates otherwise.

On appeal, the Court of Appeal upheld the motion court's ruling, and confirmed that a forfeited deposit does not constitute damages for breach of contract, but rather stands as security for the purchaser's performance of the contract. A purchaser's obligations under an agreement of purchase and sale are thus distinct from the obligation incurred by the payer of the deposit. A deposit's implied term is that upon the breach of a contract by the purchaser (or, in the case of a pre-incorporation contract, by the promoter on behalf of the intended corporate purchaser), the deposit will be forfeited to the vendor, absent express wording in the contract to the contrary.

In the case at bar, the contract did not contain any express provision concerning the return of the deposit in the event that the corporation was not ultimately incorporated or failed to formally adopt or assume the agreement. In the appellate court's view, such a contrary intention must be expressly stated if the deposit is not to be forfeited upon the failure of the purchaser to perform his or her contractual obligations. The Court of Appeal also held that it was reasonable for the motion judge to interpret the phrase "without any personal liabilities" in the context of the contract as a whole, as opposed to applying to the deposit specifically, inasmuch as any contrary determination would render the deposit meaningless, and would provide no incentive whatsoever to complete the transaction, nor any compensation to the vendor for the defaulting purchaser's failure to complete the transaction.

(b) The Vendor Need Not Accept the Purchaser's Revised Terms in Order to Properly Mitigate Damages

(i) *Lucijanic v. Hashmi*, 2019 ONCA 97

The purchasers of a residential property located in Milton failed to complete their purchase and sale transaction on the scheduled closing date. On the vendor's motion for summary judgement, the purchasers argued that the vendors failed to take reasonable steps to mitigate their losses, inasmuch as the vendors had rejected the purchasers' offer to complete the transaction at a

price that was lower than the purchase price stipulated in the contract, but nevertheless higher than the price at which the vendors ultimately resold the property. The motion judge found the purchasers to be in breach of contract, and rejected their argument regarding the lack of mitigation on the part of the vendors, and consequently ordered that the deposit be forfeited to the vendors.

On appeal, the purchasers did not contest the declaration that they had breached the agreement of purchase and sale. Rather, the purchasers claimed that the motion judge was wrong in failing to give proper consideration to the vendors' refusal to accept their offer to complete the transaction on revised terms that were more favourable than the price at which the vendors ultimately resold the property to a third party. The Court of Appeal rejected this argument, noting that the purchasers offered to complete the transaction at a reduced purchase price prior to the closing date, and before failing to complete the transaction as required by the agreement. The vendors were under no obligation to mitigate anything until the purchasers' breach of the agreement. Furthermore, after the purchasers failed to close, the property was relisted, and nothing prevented the purchasers from making a new offer at such later time. The appellate court further confirmed that the vendors were not required to specifically approach the purchasers in order to give them an opportunity to better the third-party offer that the vendors had ultimately accepted.

(ii) *Bang v. Sebastian*, 2019 ONCA 501

On May 7, 2017, the purchaser entered into an agreement of purchase and sale to acquire from the vendors a residential property located in Mississauga, at a purchase price of $995,000, with the deposit totaling $35,000. The transaction was scheduled to be completed on August 7, 2017. A few days prior to the closing date, the purchaser notified the vendors that she was unable to complete the transaction because she could not obtain the necessary financing to close on an all-cash basis to the vendors. The purchaser purported to re-negotiate the price of the purchased dwelling with the vendors, and consequently offered to complete the transaction at the reduced

price of $920,000. The vendors rejected the purchaser's re-negotiation efforts, and subsequently relisted their property consequent upon the purchaser's default. The property was ultimately resold in February 2018, for a sale price of $920,000. The difference between the contract price and the resale price formed part of the damage award against the defaulting purchaser, along with various financing and carrying costs that the vendors had incurred.[13]

On appeal, the Court of Appeal affirmed that the duty to mitigate does not compel the seller of residential property to accept the purchaser's reduced offer (in this case, a reduction of $75,000.00) as mitigation of the vendors' losses triggered by the purchaser's breach of contract, and to consequently abandon a perfectly valid agreement (and correspondingly accept a substantially reduced price) simply because the purchaser decides to abort said agreement due to a declining real estate market, or due to the purchaser's inability to obtain the requisite mortgage financing.

In addition, the appellate court observed that there was evidence that the purchaser knew that the vendors were acquiring a new home with the sale proceeds, and it was therefore reasonably foreseeable that the vendors would incur financing and carrying costs related to such purchase, in the event that the purchase and sale transaction involving the vendors' home failed to close. The Court of Appeal therefore allowed some of the financing and carrying costs of the vendors to be included in the award of consequential damages against the purchaser.

(iii) *Azzarello v. Shawqi*, 2019 ONCA 820

The purchaser entered into an agreement of purchase and sale on March 27, 2017 to acquire a residential property located in Mississauga from the vendors at a purchase price of $1,555,000,

[13] The court found that it was reasonably foreseeable to the purchaser that the vendors would incur financing costs, or loss of use of funds, in not receiving the contracted net closing amount on the scheduled completion date. However, the court did not accept that the purchaser could reasonably have foreseen that the vendors' financing would involve four loan facilities (namely, a Scotia Bank bridge loan, a Scotia Bank line of credit, a National Bank mortgage, and a National Bank line of credit). The vendors' claim for financing broker fees of $1,690, home appraisal fees of $548.05, and lawyer's fees of $621.50 in managing these four loan facilities was therefore disallowed.

with a closing date of June 28, 2017, and with a deposit of $75,000. The purchaser requested (and received) a number of extensions of the closing date, but failed to close on any of the extended dates. The vendors subsequently relisted their property at the original listing price, and ultimately resold same for less than the price that the purchaser had contracted to pay. On a motion for summary judgement, the motion judge awarded the vendors damages in the amount of $308,688.31, representing the difference between the contract price and the resale price, as well as consequential damages for the cost of staging, legal fees, carrying costs of the property, and interest on the vendors' line of credit. The motion judge further ordered that the purchaser's deposit be forfeited, but should not be credited towards the damage award.

On appeal, the purchaser contended, *inter alia*, that the motion judge erred in the application of the vendors' duty to mitigate, inasmuch as the vendors did not entertain the purchaser's offer (after the purchaser failed to complete the transaction on the extended closing date) to acquire the property for a 10% reduction in the original purchase price. Instead, the vendors resold the property to a third party for $1,280,000, when they could have resold the property to the defaulting purchaser for just under $1,400,000. The Court of Appeal rejected this submission, noting that the duty to mitigate does not oblige a vendor to accept an offer from the defaulting purchaser for less than the original price, and then be relegated to suing the purchaser for the difference between the two prices. While a vendor may choose to accept such a reduced offer, particularly in a declining market, the vendor cannot be obliged to do so. As the appellate court observed, the duty to mitigate is derived from the proposition that the innocent party cannot recover losses from the defaulting party that could have been avoided by the innocent party's reasonable efforts. However, the Court of Appeal affirmed that it is not reasonable to oblige the vendor, in an effort to reduce the losses claimed from the defaulting purchaser, to resell the property to the same defaulting purchaser, and then pursue a claim in damages against that purchaser for the difference.

Although the defaulting purchaser would, in the foregoing scenario, be obliged to pay the same amount either way, the defaulting purchaser would nevertheless attain a significant tactical and procedural advantage over the innocent vendor. In the appellate court's view, the effect of endorsing the proposition advanced by the purchaser would be to undermine the sanctity of the original bargain, by effectively encouraging purchasers to default in a falling market, and to offer a lower price for the same property, leaving vendors with the risk and expense of recovering the balance of the original contract price in an action against the same defaulting purchaser. Simply put, the duty to mitigate does not go that far.

The appellate court did, however, find that the motion judge erred in law by holding that the forfeited deposit should not be credited towards the vendors' damage award. The Court of Appeal confirmed that where the vendor suffers a loss, and decides to pursue a claim in damages against the defaulting purchaser, the deposit must then be taken into account, and shall correspondingly be treated as part payment towards the unpaid purchase price, whether received on completion or reflected in the amount of the damages suffered as a result of the defaulting purchaser's failure to close.

(iv) *McKnight v. Morrison*, 2019 ONSC 552

The vendor, as the estate trustee of her late sister's estate, listed the deceased's residential property for sale in March 2017 for $439,900. The vendor quickly received five offers to purchase the property and decided to proceed with an offer presented by the purchaser, as it was the highest offer and contained no conditions. The parties executed an agreement of purchase and sale for the property to be sold for a purchase price of $532,500, with a closing date of June 30, 2017, and with a deposit in the amount of $10,000.

Despite executing the agreement of purchase and sale on March 18, 2017, the purchaser did not list her own property for sale until May 26, 2017. Three days before the scheduled closing

date, the purchaser requested an extension of the closing to August 18, 2017, as she needed more time to sell her own property in order to finance her purchase. As this was an estate sale, the vendor did not want to maintain a vacant property and incur additional expenses to the estate, without any certainty of a closing date. After consulting with a real estate lawyer, the vendor advised the purchaser that she was agreeable to extending the closing date to July 14, 2017, on certain conditions. Negotiations ensued, which included the purchaser offering to accelerate the closing date from August 18, 2017 to July 31, 2017, but the parties were unable to reach an agreement on the terms of the extension. On the closing date, the purchaser implored the vendor to provide a four-week extension of the closing date, and confirmed her intention to complete the transaction when she was in receipt of funds from the sale of her own property. The vendor rejected this request once again, and the purchaser failed to complete the transaction on the scheduled closing date. The vendor subsequently relisted the property for sale on July 2, 2017 for $459,000, and ultimately resold the property in a declining market at the sale price of $455,000, with a closing date of July 28, 2017. The vendor consequently brought an action against the defaulting purchaser for breach of contract and damages.

On a motion for summary judgment, the purchaser argued that the vendor did not prove her damages, inasmuch as the vendor failed to adduce evidence that subsequent to the purchaser's default, the property was resold for the highest price obtainable. The purchaser asserted that it was unreasonable for the vendor to have sold the property for $77,500 less than what she had agreed to pay, with essentially the same extended closing date that she had proposed during the negotiations for the requested extension thereof. The purchaser also believed that it was unreasonable for the vendor to have only listed the property for two days (namely, a Sunday and a holiday Monday) before accepting the new offer. In acting as the vendor did, the purchaser submitted that the vendor failed to mitigate her losses.

The court rejected each of the purchaser's submissions, and confirmed that the vendor was not required to obtain the highest possible price for the property, but rather was only required to obtain a price that was reasonable, given all of the facts of the case, including the prevailing market conditions. The court found that the sale price of $455,000 was reasonable in the circumstances, given the undisputed evidence that the market had shifted from a "seller's market" to a "buyer's market" by the end of June 2017. Notwithstanding the changing market conditions, the vendor had listed the property at a price that was $20,000 over her original listing price, and the ultimate sale price was negotiated with the third-party purchaser before the vendor had agreed to accept same. Moreover, the vendor agreed to a closing date with the third-party purchaser only twenty-five days later, thereby reducing her carrying costs.

The court further observed that the vendor was not required to wait for the defaulting purchaser to have sold her own property in the hope that the purchaser will then revive the repudiated contract, regardless of how sincere the defaulting purchaser's intentions may have been. The vendor was not obliged by law, nor by any provisions in the agreement of purchase and sale, to negotiate an extension of the closing date in order to accommodate the defaulting purchaser, particularly in the face of an unconditional resale agreement. In the court's view, it was entirely the purchaser's failure to list her own property in a timely manner that engendered the need for an extension of the closing date, and such failure should not be foisted upon the vendor to the latter's prejudice. Additionally, it was clear on the evidence that even if an extension of closing had been granted, there was no guarantee that the purchaser would have sold her own property by July 31, 2017, and correspondingly have sufficient funds to the complete the transaction with the vendor. In fact, the evidence indicated that the purchaser's property had not been sold by August 29, 2017. The vendor was therefore entitled to damages in the amount of $78,376.85 (with the $10,000 deposit to be credited against such amount), representing the difference in the contract price and

the resale price of the property, together with various carrying costs incurred by the vendor for utilities, realty taxes, and legal fees for the aborted transaction.

(v) *Friese v. Arfa*, 2019 ONSC 3332

On April 15, 2017, the parties entered into an unconditional agreement of purchase and sale, pursuant to which the vendor agreed to sell to the purchaser a residential property located in Keswick for the purchase price of $590,000, with a closing date of June 26, 2017, and with a deposit of $15,000. On the date of closing, the vendor's lawyer was notified that the purchaser was unable to complete the transaction, since the purchase and sale transaction in respect of the purchaser's own property had failed to close. The following day, the vendor relisted the property for sale at the original listing price of $599,900.

A few weeks later, the purchaser proposed certain terms, by way of an amendment to the agreement of purchase and sale, whereby the vendor's sale of the property to the purchaser could be revisited. The vendor, however, did not accept the proposed amendment, and continued to list the property for sale. Since there was no interest or activity in respect of the listing, the vendor reduced the listing price of the property to $529,000, and then again to $499,000. The property was ultimately resold in September 2017 for a purchase price of $425,000. The vendor subsequently commenced an action against the purchaser for breach of contract and damages.

At trial, the purchaser submitted that the vendor should have entertained her proposal to amend the agreement of purchase and sale. She argued that if the vendor had accepted the purchaser's proposal (or agreed to other negotiated terms), then the transaction would have closed, and there would have been no damages. The purchaser further contended that by lowering the listing price repeatedly, the vendor did not take reasonable steps to mitigate his damages.

In rejecting the purchaser's submissions, the court observed that while the vendor did consider the purchaser's proposal, the amendment to the agreement of purchase and sale was

problematic, because it did not reflect what the parties were discussing. Moreover, there was no obligation on the part of the vendor to pursue further dealings with the defaulting purchaser. It was clear that the vendor received incorrect or inaccurate information from the defaulting purchaser, and did not have the confidence to continue negotiations, which was reasonable in the circumstances. The court further concluded that the actions taken by the vendor, and by his lawyer and real estate agent, demonstrated a course of action whose objective was to sell the property for the best price and in a timely fashion. The purchaser failed to lead any evidence to establish that the vendor did not make reasonable efforts to mitigate. Accordingly, the vendor was entitled to damages of $165,000, based on the difference between the contract price and the resale price of the property, plus special damages of $2,729.29 (which included legal fees for the aborted transaction, increased interest payments on money borrowed, and additional realty taxes).

(c) The Size of the Deposit and its Impact on the Purchaser's Ability to Attain Relief from Forfeiture

(i) *Dar v. The Yards Corporation*, 2019 ONCA 362

The purchaser, a non-resident buyer, entered into an agreement of purchase and sale to acquire a residential property from the vendor, and provided deposits totaling $134,960 (being approximately 28% of the purchase price), but failed to submit the last five deposits due and owing thereunder. The vendor granted the purchaser several extensions of time to pay the outstanding deposits before ultimately terminating the transaction. The purchaser commenced an action for relief from forfeiture, claiming that the amount of the deposit was grossly disproportionate to the damages suffered by the vendor. The purchaser further contended that there was an inequality of bargaining power between the parties to the transaction, given that the vendor was an experienced land developer and the purchaser was an ordinary citizen.

The motion judge found that the amount of the deposit agreed to by the purchaser, as a non-resident buyer, was not unconscionable in and of itself. Moreover, the purchaser received the advice and assistance of both a real estate agent and a lawyer, in connection with this purchase and sale transaction, and there was nothing in the conduct of the vendor that was considered shocking, oppressive, or offensive, in terms of the resulting agreement of purchase and sale or the performance of the contractual obligations of the parties. Finally, the motion judge found that the vendor acted diligently, fairly, and, to some extent, to its own disadvantage in not terminating the agreement of purchase and sale earlier, when the purchaser first failed to advance the requisite deposit monies when due. The vendor's multiple indulgences, in the motion judge's view, should not be turned into an equitable reason to grant relief from forfeiture that would deprive the innocent vendor of its contractual rights.

The Court of Appeal dismissed the purchaser's appeal, and confirmed that, having regard to the circumstances surrounding the making of the agreement and the relationship between the parties, there was nothing that would justify a finding of unconscionability, nor was the amount of the deposit so forfeited by the defaulting purchaser disproportionate to the damages suffered by the innocent vendor.

(ii) *Nawara v. Riverstone*, 2019 ONSC 111

In August 2011, the purchaser's brother agreed to acquire a residential condominium unit from the vendor, but was unable to complete that transaction, and ultimately forfeited his deposit in the amount of $84,498.50 (hereinafter referred to as the "**First Deal's Deposit**"). On May 7, 2016, the purchaser entered into an agreement of purchase and sale with the vendor for the acquisition of a different condominium unit within the same complex (the "**Second Property**"), for a purchase price of $359,999, with a series of deposits due and owing thereunder totaling 20% of the purchase price. Shortly thereafter, the parties executed an amendment to the agreement of

purchase and sale in respect of the Second Property, whereby the vendor agreed to transfer and credit the First Deal's Deposit towards the purchaser's acquisition of the Second Property, and also agreed to increase the deposit required to be paid on the interim-occupancy closing date. Although the purchaser failed to make the required deposit payment on the interim-occupancy closing date, the vendor provided the purchaser with an opportunity to rectify the latter's outstanding default, and the purchaser proceeded to do so three weeks later.

However, the purchaser ultimately failed to complete the final closing of the purchase and sale transaction in respect of the Second Property, despite the fact that the vendor had granted an extension of the final closing date to accommodate the purchaser. Consequently, the vendor terminated the agreement of purchase and sale, and purported to retain the purchaser's deposit, as well as the First Deal's Deposit, collectively totaling $101,063.50 (amounting to approximately 28% of the purchase price).

On a motion for the determination of a point of law, the purchaser urged the court to conclude that the deposit was out of proportion to the damages suffered by the vendor, inasmuch as the vendor was ultimately able to resell the property for $11,000 more than the purchaser contracted to pay. The vendor contended that the parties specifically agreed that the forfeiture of the deposit would not constitute a penalty, and that it would not be necessary for the vendor to prove that it suffered any damages in order for the vendor to be entitled to retain same. Additionally, the vendor relied on the Court of Appeal's decision in the case of *Redstone Enterprises Ltd. v. Simple Technology Inc.*,[14] in which the court concluded that although the vendor in that case had suffered no damages, that fact alone did not render the forfeiture of the deposit unconscionable.

[14] 2017 ONCA 282.

At the outset, the court noted that merely examining the percentage of the deposit to the total purchase price will not always be conclusive or determinative of whether or not a defaulting purchaser will be entitled to relief from forfeiture. Since the deposit in this case (namely, 28% of the total purchase price) exceeded the 20% range required to be paid by other unit purchasers in this particular condominium project, and was also above the upper range of 25% that has been judicially accepted for the forfeiture of deposits in the prevailing case law, the court concluded that it was appropriate to look closely at the facts of this case for any indicia of unconscionability.

However, the court ultimately concluded that there was no inequality of bargaining power, nor any substantial unfairness regarding the bargain that had been negotiated between the contracting parties. Additionally, there was no indication that the purchaser was relatively unsophisticated compared to the vendor, or that the negotiations were not *bona fide*, nor did the vendor's conduct support a finding of unconscionability. The court held that the gravity of the purchaser's breach of contract was significant, and that, by contrast, the vendor was more than fair by allowing the purchaser the substantial benefit of treating the First Deal's Deposit as a further deposit on account of the purchase price of the Second Property, and also by offering to extend the timelines to allow the purchaser to complete the transaction, on two separate occasions. The purchaser failed to establish that the deposit was disproportionately large in the circumstances, or even if it was larger than customary, that the size of deposit by itself was sufficient to make its forfeiture unconscionable. Accordingly, notwithstanding that the deposit totalled 28% of the purchase price, the court concluded that it would not be unconscionable for the vendor to retain the full amount of the deposit, as a consequence of the purchaser's repudiation of the contract.

(d) Additional Deposits Paid for Extensions of the Closing Date Being Forfeited

(i) *Greco v. Padovani*, 2019 ONSC 4105

The purchaser entered into an agreement of purchase and sale to acquire the vendors' residential property in Richmond Hill, for a purchase price of $3,200,000, with a closing date of September 29, 2017. The agreement called for two deposits, with the first deposit of $50,000 to be paid upon acceptance of the offer, and with the second deposit of $150,000 to be paid two weeks later. Two days prior to the scheduled closing date, the purchaser requested a four-week extension of the closing, and agreed to submit a further deposit in the amount of $200,000 payable directly to the vendors. This was the first of eight extensions requested by the purchaser. In order to obtain each of these extensions, the purchaser agreed to pay an additional deposit to the vendors' real estate lawyer, in trust (ultimately paying a total of $200,000 in further deposits), together with interest at the rate of 6% per annum on the outstanding balance of the purchase price. The final extension of the closing date was established to be on March 20, 2018. The vendors indicated that they would agree to a further extension to April 30, 2018, provided that the interest was prepaid to date. The purchaser failed to close on March 20, 2018, and did not prepay the interest on the outstanding balance of the purchase price, which had amounted to $18,871.23. The vendors' lawyer advised the purchaser's lawyer that the vendors considered the purchaser in breach of the agreement. Without prejudice efforts were made to revive the agreement on certain terms, but those efforts ultimately failed.

The vendors relisted the property for sale on June 26, 2018 with an asking price of $2,499,000, reflective of prices in the declining housing market, and correspondingly applied for a declaration that they were entitled to retain the deposits paid by the purchaser totalling $400,000. As of the date of the hearing of the application, the property had not been sold. After reviewing the law with respect to deposits, the court found no unconscionability in the vendor retaining the

full $400,000 deposit. The original deposit of $200,000 was equivalent to 6.25% of the purchase price, and was not disproportionate. While the additional deposits resulted in a 12.50% total deposit, the court found that this was also not disproportionate, especially given the fact that the additional deposits were made in consideration for extensions of the original closing date. By agreeing to these extensions, the vendors lost the opportunity to resell their property at an earlier date. In the court's view, each extension increased the risk to the innocent vendors, and should correspondingly be accompanied by an increased risk of forfeiture to the defaulting purchaser. Accordingly, the court ordered the release of the deposit monies that were being held in trust by the vendors' real estate agent and lawyer, without prejudice to the right of the vendors to pursue a claim for damages against the defaulting purchaser.

(e) The Purchaser's Inability to Obtain Financing Due to Market Conditions Not Amounting to Frustration of the Contract

(i) *Perkins v. Sheikhtavi*, 2019 ONCA 925

On April 3, 2017, the purchaser entered into an unconditional agreement of purchase and sale to acquire a residential property from the vendor, for a purchase price of $1,871,000, and with a deposit in the amount of $80,000. The transaction was scheduled to be completed on July 10, 2017. On the closing date, the purchaser advised the vendor that she could not complete the transaction, as she was unable to sell her own home and could not obtain sufficient mortgage financing. The vendor ultimately resold the property to a third party for $1,251,888 and subsequently commenced an action against the defaulting purchaser for damages in the amount of $623,733.05, representing the difference between the contract price and the resale price, together with carrying costs of the property.

On a motion for summary judgment, the purchaser took the position that it was impossible to perform the contract due to the provincial government's announcement of the non-resident

speculation tax and the tightening of mortgage lending rules, and the precipitous drop in housing prices (i.e. by upwards of 20-30%) resulting therefrom. The purchaser submitted that her inability to obtain satisfactory financing as a consequence of the government's actions was neither foreseeable nor within her control, and thereby rendered the purchaser's performance of the contract frustrated. The motion judge rejected the purchaser's arguments, finding that the provincial government's announcement of the non-resident speculation tax did not change or alter the purchaser's obligations arising under the agreement of purchase and sale.

On appeal, the Court of Appeal confirmed that although a supervening event did, in fact, occur between the date of contract formation and the final closing date (namely, the announcement of a new government policy), this supervening event did not amount to frustration of the contract, because it did not alter the nature of the bargain or the contractual obligations of the parties to such an extent that compelling performance (despite the new and changed circumstances) would be akin to ordering the parties to do something radically different from what they had originally agreed to under the contract. In other words, a contract is not frustrated if the supervening event was expressly contemplated by the parties at the time of entering into the contract, and was expressly provided for (or intentionally excluded from, or purposely not provided for) in the contract. In this case, the purchaser had deliberately chosen not to include a condition regarding the sale of her home, nor a condition regarding the procurement of satisfactory mortgage financing, before being contractually obliged to complete the transaction. The purchaser knowingly accepted and assumed the risks associated with making an unconditional offer to purchase the property, in order to induce the vendor to accept her offer over other competing offers (since the purchaser was not the highest bidder). Therefore, the purchaser's inability to obtain the requisite financing to complete the transaction on an all-cash basis with the vendor, whether or not as a result of the policy announcement of the provincial government, did not change or alter the nature of the agreement

of purchase and sale, nor force her to do something radically different from what she had agreed to. The contract was therefore not frustrated, but simply breached.

Finally, the appellate court also confirmed that the "entire agreement clause" set forth in the agreement of purchase and sale (which specifically affirmed that the written contract constituted the entire agreement between the parties regarding the subject matter thereof) precluded the purchaser from asserting that the contract was subject to an implied condition or term regarding the purchaser's procurement of mortgage financing, or the sale of the purchaser's home.

(ii) *Paradise Homes North West Inc. v. Sidhu*, 2019 ONSC 1600

Pursuant to an agreement of purchase and sale dated March 4, 2017, the purchaser agreed to acquire from the vendor a residential property located in Brampton, for a purchase price of $819,990. Prior to the closing date, the purchaser paid four deposits totalling $45,000, but defaulted on the fifth deposit. The purchaser subsequently sought to assign the agreement of purchase and sale to a third party, but refused to pay the assignment fee requested by the vendor for granting its consent thereto (being $25,000, plus $1,000 for legal fees). The purchaser ultimately failed to complete this transaction, and the vendor later resold the property to a third party for $715,000 in the spring of 2018.

The vendor commenced an action against the defaulting purchaser for damages in the amount of $82,059.50, representing the difference between the contract price and the resale price, together with carrying and sale costs, less the purchaser's deposit in the amount of $45,000. On a motion for summary judgment, the purchaser took the position that it was impossible to perform the contract due to market-driven conditions (and the consequent reduction in financing available as a result thereof). The purchaser submitted that the precipitous drop in the real estate market, and the purchaser's corresponding inability to obtain satisfactory financing, were not foreseeable, and

were beyond the purchaser's control, and thereby rendered the purchaser's performance of the contract frustrated. Additionally, the purchaser contended that the contract was further frustrated by the fees charged by the vendor to grant its consent to an assignment.

At the outset, the court noted that the doctrine of frustration operates to relieve the parties to a contract of their bargain because a supervening event has occurred, without the fault of either party, which renders the performance of the contract substantially different than that for which the parties had bargained. The court held that the decline in the housing market did not trigger the defence of frustration. The parties had intended that the vendor would sell the property to the purchaser for the agreed-upon price of $819,990, and the purchaser's inability to obtain the requisite financing to complete the transaction on an all-cash basis with the vendor did not change or alter the nature of the contract.

With respect to the purchaser's submission that the vendor's desired assignment fee amounted to frustration, the court noted that the agreement of purchase and sale expressly confirmed that the purchaser could not assign the contract unless the vendor consented to same (which consent could be arbitrarily withheld). In other words, the vendor was entitled to unilaterally refuse any assignment, but nevertheless agreed to the purchaser's request, on the condition that the purchaser pay the requisite assignment fee. In the court's view, the assignment fee was reasonable, given the purchase price of the property. Accordingly, the court rejected the purchaser's submissions and granted the vendor summary judgement, and allowed the vendor to retain the deposit without relief from forfeiture.

(iii) *Forest Hill Homes v. Ou*, 2019 ONSC 4332

On November 19, 2016, the purchasers agreed to acquire a residential property to be built by the vendor in a subdivision known as Cornell Rouge in Markham. After accounting for various

closing adjustments described in the agreement of purchase and sale, the total purchase price of the property was $1,729,820.99. On the scheduled closing date, the purchasers did not have the necessary funds in order to complete the transaction. The vendor subsequently commenced an action for damages consequent upon the purchasers' default.

On a motion for summary judgment, the purchasers advanced various arguments in defense of their failure to close, including frustration, delay by the vendor, and misrepresentation by the vendor's sales agent. With respect to frustration of the contract, the purchasers argued that a drastic and unforeseeable drop in the real estate market made it impossible for them to obtain the financing they needed to perform their obligations under the agreement of purchase and sale. However, the purchasers did not adduce any real estate market evidence in support of this assertion. Rather, they simply claimed that they could not obtain the requisite financing, which they subjectively attributed to a change in the market. The court found that even if there was evidence to support the purchasers' assertion, there is nothing about a change in the market that amounts to an unforeseen event that substantially alters the nature of the agreement. In other words, it could not be said that the contract itself was rendered totally different from what the parties had intended.

The court went on to reject the purchasers' additional arguments, including the purchasers' assertion that the vendor's excessive delay in setting the final closing date undermined the enforceability of the agreement of purchase and sale. As the court observed, the vendor was within its contractual rights to set the final closing date when it did, inasmuch as the agreement of purchase and sale expressly entitled the vendor to select a closing date at its own discretion, so long as such date was prior to January 18, 2019 (and established in accordance with the mandatory requirements of Tarion Warranty Corporation). In any event, the longer time until closing did not prejudice the purchasers, who admitted in cross-examination that they did not have the funds to complete the transaction on the original tentative closing date.

The vendor was ultimately awarded damages in the amount of $554,308.41, representing the difference between the sale price and the appraised market value of the property, less the deposit received, together with ancillary expenses claimed under the agreement of purchase sale (including realty taxes, utilities, and insurance premiums). The vendor was not, however, entitled to charge interest (in the amount of 20% of the unpaid purchase price) for the purchasers' failure to pay the balance due on closing, notwithstanding the fact that the agreement of purchase and sale had expressly afforded such a right to the vendor. In the court's view, a party in the vendor's position, namely a subdivision builder with a standard form contract for each of its homebuyers, cannot enforce such an onerous and unexpected term in the contract, without at least drawing same to the purchaser's attention.

(f) The Vendor Need Not Obtain an Appraisal of the Property in Order to Properly Mitigate

(i) *Zou v. Sanyal*, 2019 ONSC 738

The purchasers entered into an agreement of purchase and sale to acquire from the vendors a residential property located in Milton, for the purchase price of $971,000, and with a deposit in the amount of $40,000. The transaction was scheduled to be completed on July 18, 2017. Approximately one month prior to closing, the purchasers requested an extension of the closing date, as they were unable to sell their current property. The vendors, however, rejected this request, as they required the sale proceeds in order to complete the purchase of their own new property. A few weeks later, the purchasers indicated that they were unable to obtain mortgage financing to complete the transaction, unless the vendors were willing to renegotiate the purchase price. The vendors were not agreeable to this request.

On the day of closing, the vendors took steps to tender the closing documents and keys on the purchasers' lawyer, but did not receive payment of the outstanding balance of the purchase

price. Instead, the purchasers' lawyer wrote a letter to the vendors' lawyer advising that the agreement of purchase and sale was null and void on various grounds, including the fact that the approximate square footage of the property (as noted in the vendors' listing) was incorrect, and that the vendors had failed to provide a survey of the property.

The vendors subsequently relisted the property for sale on July 25, 2017 at a listing price of $910,000. The vendors lowered the listing price to $859,000 on August 14, 2017, and then to $819,000 on September 19, 2017. By October 18, 2017, the vendors had received one offer to purchase the property at a purchase price of $745,000. On that day, the vendors lowered the listing price to $799,000. On October 24, 2017, the vendors received an offer in the amount of $780,000 and, later that day, after several rounds of bargaining, the vendors accepted an offer to acquire the property for a purchase price of $797,000. The vendors thereafter commenced an action against the purchasers for breach of contract and damages.

On a motion for summary judgment, the purchasers contended, *inter alia*, that the vendors misrepresented the floor area of the property, and that the vendors' failure to provide a survey of the property, in contravention of the provisions of the agreement of purchase and sale, justified the purchasers' failure to complete the transaction. However, the purchasers had inspected the property (being a fully-completed home) for one hour prior to the vendors accepting their offer, and there was no evidence to support the claim that the vendors misrepresented the size or square footage of the property. Additionally, the agreement of purchase and sale only called for the delivery of a sketch or survey of the property if one was within the vendors' control, and there was no evidence submitted in this regard. In the court's view, the vendors' failure to provide a survey (if one was, in fact, in the vendors' possession or control) was not a breach that substantially deprived the purchasers of the benefit of the contract.

The purchasers further submitted that the vendors' failure to obtain one or more appraisals of the property when it was relisted for sale raised a genuine issue requiring a trial, in order to determine whether the vendors properly mitigated their damages. In rejecting this argument, the court noted that the vendors were not under any obligation to obtain an appraisal of the property. The evidence demonstrated that the vendors exposed the property to the marketplace for a reasonable period of time, and that they ultimately accepted the highest offer that they received, after engaging in negotiations with the new purchaser that resulted in an increase to the purchase price that was initially offered. The purchasers failed to show that the vendors did not act reasonably by taking the steps that they did to sell the property.

Accordingly, the vendors were entitled to damages in the amount of $134,000, representing the difference between the contract price ($971,000) and the resale price ($797,000), less the amount of the deposit ($40,000). The vendors were also entitled to damages in the amount of $20,256.38, based upon the increase in the commission fees that they had paid to the real estate agent who represented them on the resale.

(ii) *Degner v. Cabral*, 2019 ONSC 1610

The vendor, as the estate trustee of her late aunt's estate, listed the deceased's residential property for sale in April 2017 for $399,900, and quickly received sixteen offers to purchase the property in excess of the listing price. The purchasers submitted an unconditional offer to purchase the property for $551,000, together with a $10,000 deposit. On the scheduled closing date, the purchasers failed to complete the transaction, as they were unable to obtain financing, despite the fact that the vendor had previously granted them two extensions of the closing date. On July 18, 2017, six days later, the vendor relisted the property for sale and received three offers to purchase (at $400,000, $426,000, and $450,000 respectively). On July 24, 2017, the vendor accepted the

highest offer, with a closing date of August 10, 2017. The vendor subsequently brought an action against the original purchasers, seeking damages of $100,842 on account of the purchasers' failure to close. Only one purchaser defended the action.

The purchaser took the position that the vendor did not properly mitigate her damages, inasmuch as she ought to have relisted the property for at least thirty days, as suggested by the purchaser's expert, before considering and accepting any offers, as opposed to selling the property after it was listed for only six days in duration. However, the purchaser failed to adduce any evidence to support the assertion that, had the property been listed for such time, the vendor would have likely received an offer higher than $450,000. On the contrary, it was established (and acknowledged by the purchaser) that the property was resold in August 2017 for more than its market value. The vendor's evidence confirmed that the real estate market in Hamilton had experienced a significant downturn from the "seller's market" that had prevailed at the time that the purchasers had submitted their original offer to acquire the property. The court found that the vendor acted reasonably in taking her real estate agent's advice, and accepting the resale offer when she did. It would not be appropriate to require the vendor to speculate in a declining market and to correspondingly assume the burden of the changes in the market following the original closing date.

Although the vendor did not provide expert appraisal evidence of the fair market value of the property at the time of the subsequent sale, the vendor was not obliged to do so, given the clear evidence of the declining real estate market, as well as the resale price which afforded good evidence of the market value of the property. The court further confirmed that in a falling market, the vendor will generally be awarded damages equal to the difference between the contract price and the highest price obtainable within a reasonable time following the scheduled closing date, after making reasonable efforts to resell the property. The vendor was therefore entitled to damages

in the amount of $100,092, which included the difference between the two sale prices (less the deposit received), as well as the legal fees incurred in the aborted transaction, realty taxes, insurance premiums, and the utility fees incurred between the two closing dates.

(g) The Vendor's Damages Calculated on the Difference Between the Contract Price and the Listing Price, Where the Property Remained Unsold

(i) *Wang v. Tribute (Grandview) Ltd.*, 2019 ONSC 201

In April 2017, the purchaser agreed to acquire a new home to be constructed in Oshawa from the builder/vendor, for a purchase price of $954,000, with a deposit in the amount of $96,000, payable in several installments. The tentative closing date for the transaction was scheduled for March 25, 2019. In total, the purchaser paid $24,000 towards the requisite deposit, leaving $72,000 outstanding. Throughout May and June of 2017, the purchaser expressed concerns about her ability to complete the transaction, and made attempts to have the vendor transfer her deposit monies to a different residential property with a lower purchase price. She also sought to terminate the agreement of purchase and sale altogether. A representative of the vendor advised the purchaser that she could not transfer the deposit monies to a different property, and warned the purchaser that she risked losing her deposit monies if she failed to complete the transaction.

Between July 27, 2017 and August 31, 2017, the purchaser retained counsel with a view to recovering her deposit, and subsequently commenced an action against the vendor. In its counterclaim, the vendor initially sought specific performance to compel the purchaser to complete the transaction, but ultimately accepted the purchaser's repudiation of the agreement of purchase and sale, and claimed damages for breach of contract.

An appraisal report estimated that the value of the property, as at the date of termination of the contract (namely, on or about March 2018), was $690,000. Despite this estimate, the vendor

had relisted the property for sale at a purchase price of $763,992, before upgrades and adjustments. The evidence confirmed that the housing market reached its peak in April 2017, evidenced by record prices, a high number of properties sold, and a short exposure time. However, the housing market subsequently declined, and bottomed-out in July 2017, and thereafter gradually rebounded to a more balanced and stabilized level.

On a motion for summary judgment, the purchaser argued, *inter alia*, that the vendor was precluded from pursuing any damages in excess of the deposit monies already received, inasmuch as the vendor, through its agents, entered into a settlement agreement with the purchaser. In rejecting this argument, the court noted that the vendor's warning (i.e. that the purchaser risked losing her deposit) was not tantamount to an agreement to abandon any other claims for damages in the face of the purchaser's breach of contract. Even the subsequent letter from the purchaser's lawyer, requesting that the purchaser be released from the agreement of purchase and sale, belies the suggestion that the parties had negotiated a settlement of the outstanding issues.

With respect to the assessment of damages, the vendor took the position that the damages should be calculated based on the difference between the contract price and the estimated value of the property on the date of termination of the contract. However, even though the appraisal report listed the value of the property at $690,000 on the date of termination, the property was nevertheless listed (and remained listed as at the date of the motion) at a purchase price of $763,992. In the court's view, the vendor was only entitled to the difference between the contract price and the current listing price, less the purchaser's deposit of $24,000. The court concluded that this would be the fairest way to calculate the damages in the circumstances, having regard to the fact that the property remained unsold, and that the market continued to be in flux.

(h) The Vendor's Delay in Completing Common Element Amenities Did Not Justify the Purchaser's Failure to Close

(i) *Lin v. Brookfield Homes (Ontario) Limited*, 2019 ONCA 706

The purchaser entered into an agreement of purchase and sale with the vendor in November 2016, to acquire a vacant land condominium unit with a newly-constructed detached home being erected by the vendor thereon, at a purchase price of $1,657,107.86, with a closing date originally scheduled for December 13, 2017 (and ultimately extended, on consent, to December 21, 2017), and with the deposit being $133,031.09. The purchaser had requested further extensions of the closing date beyond December 2017, in order to arrange mortgage financing, but the vendor denied the purchaser's requests. On the scheduled closing date, the purchaser's lawyer failed to tender the requisite closing funds, and claimed that a number of promised common element amenities had not yet been completed (including a parkette and entry/exit gates to make the project a gated community), and correspondingly asserted that the vendor's failure to complete said amenities before final closing constituted a fundamental breach of contract, and in the alternative, resulted in a material change to the disclosure statement committed by the vendor, thereby entitling the purchaser to rescind the contract with impunity. In response, the vendor's lawyer confirmed that even though the common element amenities were not yet completed, the house was fully constructed and a registerable transfer of title thereto was available on the scheduled closing date, and therefore the purchaser was in breach of her contractual obligations by not closing. Furthermore, the vendor's lawyer contended that there was no material change to the disclosure statement, inasmuch as the contract expressly confirmed that the vendor's failure to complete other units within the condominium, or to complete the common elements on or before the occupancy date, shall not be deemed to be a failure to complete the unit. As a result of the foregoing default of the purchaser, the vendor terminated the agreement of purchase and sale, and forfeited the

purchaser's deposit monies, together with all amounts paid for extras, and expressly reserved its right to recover any losses sustained by reason of the purchaser's default.

Subsequent to the termination of the contract, the vendor resold the property in August 2018 for $1,300,000. Parenthetically, the parkette was completed by the vendor at the end of August 2018, and the gates were installed as of September 12, 2018. The purchaser commenced an application seeking the return of her deposit, and the vendor commenced an application seeking a declaration that the purchaser breached the agreement of purchase and sale by failing to close, and was correspondingly not entitled to a return of her deposit, nor relief from forfeiture, and that the vendor was entitled to claim additional damages for such breach.

The motion judge confirmed that in light of the provisions of the agreement of purchase and sale, the purchaser had breached the agreement, thereby entitling the vendor to terminate the contract, to retain the purchaser's deposit, and to sue for damages over and above the amount of the forfeited deposit. The court also confirmed that once the agreement had been validly terminated by the vendor (i.e. as a consequence of the purchaser's default), the purchaser no longer had any rescission rights pursuant to the provisions of the *Condominium Act, 1998*, S.O. 1998, as amended (hereinafter referred to as the "**Act**"), inasmuch as the agreement ceased to exist. The purchaser appealed the motion judge's decision.

The appellate court confirmed that the vendor's non-construction of the common element amenities, as at the closing date, did not constitute a material change within the meaning of section 74 of the Act, and that the entry/exit gates were common element components to be constructed as part of the overall development (as and when intended to be completed by the vendor), rather than same comprising essential features of the community that ought to be in place (presumably at the time of occupancy), as asserted by the purchaser, despite the express terms of the agreement to the contrary. Given the relevant language in the agreement of purchase and sale (which

confirmed that the failure to complete the common elements on or before the occupancy closing shall not be deemed or construed as a failure to complete the unit), time was not considered to be of the essence with respect to the construction and completion of the common element amenities. Accordingly, the purchaser had no legitimate justification to refuse to complete the transaction on the scheduled closing date.

(i) **The Vendor's Failure to Indicate Narrowing of Lot Did Not Justify the Purchaser's Failure to Close**

(i) ***Sankarsingh v. Ali*, 2019 ONSC 5655**

On May 3, 2017, the purchasers entered into an unconditional agreement of purchase and sale to acquire from the vendors a residential property located in Brampton, for a purchase price of $850,000, and with a deposit in the amount of $25,000. While the frontage and depth of the property were noted in both the real estate listing and the first page of the agreement of purchase and sale, there was no reference to the lot being irregularly-shaped and narrowing at the rear. On July 6, 2017, the date scheduled for the completion of the transaction, the purchasers requested (and were granted) an extension of the closing date, in order to arrange mortgage financing. The purchasers subsequently sought an abatement in the purchase price, as they were still encountering difficulty in securing financing due to an alleged appraisal of the property that reflected a significant decline in value, but the vendors were not agreeable to this request. On the extended closing date, the vendors took steps to tender the closing documents and keys on the purchasers' lawyer, but did not receive payment of the outstanding balance of the purchase price. Shortly after the transaction failed to close, the vendors relisted the property for $850,000, and ultimately obtained a single offer of $746,000 in October 2017. The vendors thereafter commenced an action in damages against the purchasers for breach of contract.

On a motion for summary judgment, the purchasers contended that the vendors misrepresented the dimensions of the property, and that this misrepresentation was material, inasmuch as it proved to be a factor in the property's appraisal and the purchasers' consequent inability to secure financing. However, there was no admissible evidence in the record to substantiate the purchasers' claim, and the purchasers failed to produce the alleged property appraisal. In the court's view, it was highly improbable that the narrowing of the lot at the rear would meaningfully affect the value of the property, or impact the decision of a reasonable person to acquire same. As the court observed, more than half of the homes in this particular subdivision are situate upon lots that are either wider or narrower at one end. Critically, the purchasers had inspected the property during daylight hours prior to the vendors accepting their offer, and there was a tall wooden fence that marked the boundary of the property in the backyard. Even on the most cursory of inspections, it would have been readily apparent to the purchasers that the property was not perfectly rectangular, and that same narrowed in the rear.

Additionally, there was no evidence in the record to support the purchasers' claim that the vendors misrepresented the size or square footage of the property. The agreement of purchase and sale accurately described the frontage and depth of the property, and a more detailed report was available to all real estate agents, which contained, *inter alia*, photographs of the property and a notation that the property narrowed to the rear. Finally, and most telling, the purchasers never sought to rescind the agreement of purchase and sale prior to the scheduled closing date because of any issue with respect to the size, shape, or dimensions of the lot. To the extent that the purchasers provided a reason for seeking an abatement in the purchase price, they merely cited difficulties in obtaining mortgage financing, without any reference whatsoever to the size of the property. Simply put, the lot size or its irregular shape was not the underlying cause for the purchasers' concern, so much as the price that the purchasers were contractually committed to pay

for same, inasmuch as the sharp decline in market values that had ensued following the formation of the contract no doubt resulted in the purchasers having substantially overpaid for the property in question.

4. OBSERVATIONS & PRINCIPLES ARISING FROM THE JURISPRUDENCE

Although issues concerning the forfeiture of the deposit, and the circumstances under which the court will grant the defaulting purchaser relief from forfeiture, inevitably turn on the specific facts and context of a particular case, the following general observations and principles can be extracted from the recent jurisprudence:

(a) Notwithstanding the court's broad jurisdiction under section 98 of the *Courts of Justice Act* to grant relief to the defaulting purchaser from the forfeiture of the deposit, in order to prevent the vendor from being unconscionably overcompensated for the purchaser's breach of contract, Ontario courts have been reluctant to exercise this discretionary remedy, absent strong and compelling facts of unconscionability, inasmuch as the underlying purpose of the deposit is to incent and motivate the purchaser to complete the transaction, failing which forfeiture of the deposit will be the inevitable result. Even in those circumstances where the agreement of purchase and sale was entered into on behalf of a company to be incorporated, and without personal liability, the Court of Appeal has confirmed that if the transaction is terminated through no fault of the vendor, the latter is nevertheless entitled to retain the forfeited deposit, absent clear contractual language that compels the vendor to return the deposit in the event that the company is not incorporated or fails to take the requisite steps to assume the agreement and complete the transaction.

(b) There is no judicial consensus on the maximum percentage of the total purchase price that a deposit can be before same will automatically be considered or construed to be a penalty,

and therefore susceptible to the court granting relief from forfeiture. In fact, there are several recent court decisions confirming that merely examining the percentage of the deposit to the purchase price will not, in most cases, be determinative of unconscionability and/or the availability of relief from forfeiture, since much turns on the terms and provisions of the particular contract, as well as the surrounding circumstances. In two recent cases, a deposit totalling 28% of the purchase price was not, in and of itself, disproportionately large enough to make its forfeiture unconscionable.

(c) The fact that the vendor has suffered no damages whatsoever consequent upon the purchaser's default will not, in and of itself, render the vendor's forfeiture of the deposit unconscionable, nor entitle the defaulting purchaser to relief from forfeiture.

(d) If the vendor's losses incurred due to the purchaser's failure to close exceed the amount of the deposit so forfeited (which often transpires in a declining market), then the liability of the defaulting purchaser will not be limited to the amount of the deposit. However, if the vendor does pursue a claim in damages against the defaulting purchaser, then the deposit monies must be brought into account, and correspondingly credited towards the aggregate of the damages being claimed.

(e) A sudden and unexpected decline in the real estate market (and the corresponding reduction in financing available to the purchaser as a result thereof) will not entitle the defaulting purchaser to claim frustration of the contract, nor absolve the defaulting purchaser from liability for his or her failure to complete the transaction as and when scheduled. Furthermore, if the purchaser willingly assumes the risk of not making the agreement of purchase and sale conditional upon the purchaser's procurement of satisfactory financing, in an effort to induce the vendor to accept the purchaser's offer over other competing offers, then the purchaser's failure to obtain financing (whether or not due to a precipitous drop in

the property's value triggered by the provincial government's policy announcement) cannot, and will not, be deemed or construed to constitute a supervening event that radically changes or alters the nature of the contract or the parties obligations arising thereunder.

(f) The duty to mitigate is derived from the proposition that the innocent party cannot recover losses from the defaulting party that could have been avoided by the innocent party's reasonable efforts. The onus will be on the defaulting purchaser to demonstrate, on a balance of probabilities, that the vendor has failed to take reasonable steps to mitigate the losses incurred due to the purchaser's repudiation of the contract. The vendor need only act reasonably (and not perfectly or flawlessly) to mitigate the damages that he or she has suffered or incurred.

(g) In an aborted real estate transaction, the resale price of the property obtained by the innocent vendor will, in most cases, afford good and sufficient evidence of the market value of the property, and the innocent vendor need not necessarily obtain an appraisal of the property at the time of relisting same, in order to establish the market value of the property in connection with the mitigation of his or her damages.

(h) Where a vendor relists the property following an aborted transaction, there is no minimum duration or specific timeframe that the property must stay on the market, before the vendor can accept an offer to resell the property in an effort to mitigate his or her damages. Rather, the vendor need only demonstrate that he or she acted reasonably, in all of the circumstances. The court will not compel the vendor to speculate in a declining market, nor to assume the burden of changes in the marketplace, following the aborted transaction. Furthermore, the Court of Appeal has confirmed that in a declining market, the vendor should be awarded damages equal to the difference between the contract price and the

highest price obtainable within a reasonable time after the aborted closing date, following reasonable efforts to resell the property thereafter.

(i) Following the formation of the contract, and prior to the scheduled closing of the transaction, the court will not oblige an innocent vendor to accept a revised or lower price from the purchaser, or to renegotiate other salient terms or provisions of the contract with said purchaser. Likewise, the vendor need not accept the defaulting purchaser's revised terms or lower price, after the purchaser has repudiated the contract, in the vendor's efforts to mitigate his or her damages, notwithstanding the fact that the property may ultimately be resold to a third party at a price that is less than the defaulting purchaser's reduced offer. Simply put, the court will not compel the innocent vendor to continue to negotiate or deal with the defaulting purchaser after the aborted closing, in those circumstances where the vendor has reasonably lost confidence or trust in the purchaser, as a result of the latter's breach of contract.

(j) The vendor has no obligation, at law, to extend the closing date, or to provide the purchaser with any other accommodations not expressly contemplated by the agreement of purchase and sale (such as waiting for the purchaser to sell his or her own property in a declining market, in the hope that the purchaser will subsequently be in a better position to complete the closing with the vendor). Nevertheless, the courts clearly do take into account the fact that the vendor has granted the purchaser one or more indulgences, or one or more extensions of closing, when determining whether or not to grant relief from forfeiture of the deposit. Furthermore, in the context of an additional deposit being paid by the purchaser in consideration for the vendor granting an extension of the closing date, particularly in a declining market (where the extension is sought in order to facilitate the purchaser's procurement of required financing, or the sale of the purchaser's own home), the courts

have confirmed that each extension of the closing date constitutes an increased risk to the innocent vendor, and should therefore be accompanied by a corresponding increased risk of forfeiture of the additional deposits so paid.

(k) In addition to the difference between the contract price and the market value of the property, the innocent vendor may be entitled to compensation for the consequential damages suffered or incurred as a result of the purchaser's breach of contract (i.e. legal fees and disbursements for the aborted transaction, additional realty taxes, utilities, real estate commissions, insurance costs, moving expenses, and additional marketing and staging costs). Accordingly, if the defaulting purchaser knew, at the time of contract formation, that the vendor was intending to use the sale proceeds to acquire another property, then the vendor's reasonable financing costs incurred to complete the vendor's acquisition (i.e. in order for the vendor to avoid repudiating his or her purchase agreement) would be reasonably foreseeable, and would correspondingly be caused or triggered by the purchaser's default, and therefore would likely be recoverable as damages against the defaulting purchaser.

(l) Where the innocent vendor in an aborted real estate transaction has relisted the property for sale, but has not successfully resold the property in a declining market, at the time that the court is assessing damages for breach of contract, the court has concluded, in the case of *Wang v. Tribute, supra*, that the fairest way to calculate the vendor's damages in such circumstances is to determine the difference between the contract price and the vendor's listing price of the property, rather than the difference between the contract price and the lower appraised value of the property as at the date of the termination of the contract. However, in the authors' respectful opinion, this approach unfairly penalizes the innocent vendor (i.e. by a reduced damage assessment against the defaulting purchaser) for having

listed the property at a price that is higher than its appraised value, and in doing so, gives far too much weight or importance to the listing price, as opposed to the appraised value, for the purposes of determining the market value of the property. The listing price may not be a fair or accurate representation of the real value of the property, and generally reflects the vendor's subjective consideration and determination of the property's value. Arguably, the innocent vendor should not be punished by the quantum of damages ultimately awarded simply because the vendor listed the property for sale at (and correspondingly endeavoured to obtain) a price that is higher than the property's appraised value, inasmuch as such efforts (if ultimately successful) would have reduced the total amount of damages ultimately being sought against the defaulting purchaser, which is, after all, the paramount objective of the vendor's duty to mitigate. Parenthetically, had the vendor relisted (and correspondingly resold) the property at a lower price, and thereby increased the defaulting purchaser's liability exposure for damages, then the purchaser would most assuredly have argued that the vendor failed to take proper steps to mitigate its damages.

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PART TWO

SUPPLEMENTAL COMPENDIUM OF CASE SUMMARIES
ON
ABORTED REAL ESTATE TRANSACTIONS
(reported between March 2020 to August 2025)

BY HARRY HERSKOWITZ - DELZOTTO, ZORZI LLP

SUPPLEMENTAL COMPENDIUM OF CASE SUMMARIES
ON
ABORTED REAL ESTATE TRANSACTIONS
(reported between March 2020 to July 2025)

Part I - Ontario Superior Court of Justice Cases

1. *Grandfield Homes (Kenton) Ltd. v. Li, 2021 ONSC 2670*
2. *Arista Homes (Kleinberg) Inc. v. Griu, 2022 ONSC 1614*
3. *Tabrizi v. Majesty Development Group Inc., 2022 ONSC 1933*
4. *Gagliardi v. Al-Karawi, 2023 ONSC 6853*
5. *400 East Mall GP Inc. v. Omololu, 2024 ONSC 703*
6. *Liddell v. Mousavi, 2024 ONSC 6431*
7. *Madison Homes Cornell Rouge Ltd. v. Jia Lin Huang and Pingkai Wu, 2025 ONSC 657*
8. *Arista Homes (Boxgrove Village) Inc. v. Ding, 2025 ONSC 2581*
9. *Datamy Inc. v. Yung, 2025 ONSC 2860*

Part II - Ontario Court of Appeal Cases

1. *1854329 Ontario Inc. v. Cairo, 2022 ONCA 744*
2. *More v. 1362279 Ontario Ltd. (Seiko Homes), 2023 ONCA 527*
3. *The Rosseau Group Inc. v. 2528061 Ontario Inc., 2023 ONCA 814*
4. *Mouralian v. Grouleau, 2024 ONCA 342*
5. *Naeem v. Bowmanville Lakebreeze West Village Ltd., 2024 ONCA 383*
6. *In the Matter of the Bankruptcy of A. Pleterski, 2024 ONCA 711*
7. *Adler v. Woitowich, 2025 ONCA 108*
8. *Correa v. Valstar Homes (Oakville Sixth Line) Inc., 2025 ONCA 156*

Part I - Ontario Superior Court of Justice Cases

Grandfield Homes (Kenton) Ltd. v. Li, 2021 ONSC 2670

The parties entered into an agreement of purchase and sale (the "**APS**") with respect to the Vendor's construction and completion of a new five bedroom luxury home in Toronto. The closing date was unilaterally extended by the Vendor in accordance with the requirements of the mandatory addendum to the APS governed by Tarion Warranty Corporation, due to the Vendor's inability to obtain an occupancy permit on the originally-scheduled closing date, and consequently a delayed closing date was scheduled for the completion of this transaction. When the Vendor rejected the Purchaser's request for a further extension of the closing date, in order to enable or facilitate the Purchaser's procurement of financing needed to complete the purchase and sale transaction on an all-cash basis with the Vendor, the Purchaser refused to complete the transaction on the delayed closing date, claiming that the Vendor had failed to complete the pre-delivery inspection of the home, and failed to provide the warranty-related documents from Tarion Warranty Corporation. The Purchaser also alleged that the Vendor had made a number of misrepresentations inducing the Purchaser to enter into the APS. The Purchaser further claimed that the transaction was unconscionable, and that the Purchaser was unable to understand the terms and provisions of the APS, and was refused the opportunity to obtain independent legal advice. The Vendor proceeded to terminate the APS on account of the Purchaser's default, whereupon the deposit monies were forfeited to the Vendor as its liquidated damages, and thereafter the Vendor sued the Purchaser for damages consequent upon the Purchaser's failure to close.

Justice Pinto held that the Vendor's non-completion of the home's pre-delivery inspection, and non-delivery of the warranty-related documents in connection therewith, was not a condition of

closing, and therefore cannot be treated as evidence of the Vendor's unwillingness to complete the purchase and sale transaction as contemplated by the APS. Relying on the appellate court decisions in *Redstone Enterprises Ltd. v. Simple Technology Inc., 2017 ONCA 282,* and in *Azzarello v. Shawqi, 2019 ONCA 820,* Justice Pinto confirmed that it is well-established by case law that when a buyer repudiates the agreement of purchase and sale, and fails to complete the transaction, the deposit is forfeited to and in favour of the seller, without the seller having to provide proof of any damages suffered by the seller, subject nevertheless to the buyer's right to seek relief from forfeiture pursuant to Section 98 of the *Courts of Justice Act, R.S.O. 1990, as amended.* In turn, the court may grant relief against forfeitures and penalties, on such terms as to compensation or otherwise as are considered just. Furthermore, the amount of the forfeited deposit must always be taken into account, and be correspondingly deducted from the total amount of the damages being claimed by the seller against the defaulting buyer. The decision to grant or withhold relief from forfeiture is predicated on a two-pronged test that has been rigorously followed by the courts in Ontario, namely: (i) whether the forfeited deposit amount is out of all proportion to the damages suffered or incurred (or reasonably anticipated to be suffered or incurred) by the seller; and (ii) whether it would be unconscionable for the seller to retain the deposit.

Justice Pinto ultimately ruled in favour of the Vendor, and did not find the transaction to be unconscionable or unfair to the Purchaser, nor that any undue influence was exercised against the Purchaser, and that no misrepresentations were made by or on behalf of the Vendor to induce the Purchaser to enter into the APS. The Purchaser paid $493,606 in deposits, against a total purchase price of $3,290,708 inclusive of H.S.T., and accordingly the deposit represented 15% of the purchase price. Although the Vendor's damages were unknown or unquantified at the time of the trial, Justice Pinto held that the forfeited deposit was not disproportionate to the likely damages that might be

suffered or incurred by the Vendor consequent upon its future re-sale of the home (ie. in the course of the Vendor's efforts to mitigate its damages), and that it would not be unconscionable for the Vendor to retain the deposit.

Arista Homes (Kleinberg) Inc. v. Griu, 2022 ONSC 1614

The parties entered into an agreement of purchase and sale (the "**APS**") involving the Vendor's construction and completion of a new home for the Purchaser, at a purchase price of $1,728,109, and with deposits totaling $134,738. The Purchaser failed to complete the transaction, and consequently forfeited the deposit to and in favour of the Vendor. The Vendor subsequently sued the Purchaser for damages crystalized upon the Vendor's re-sale of the house for $1,250,000 to a different purchaser, claiming that it suffered damages in the amount of $478,109 (being the difference in the two sale prices) plus a total of $41,293 on account of incidental carrying costs and ancillary expenses (including without limitation, utility costs, realty taxes and sales commission, plus pre-judgment interest).

The Purchaser claimed that she tried to obtain financing for the completion of the purchase of the home, but because the value of the home had decreased dramatically since the date that the Purchaser had formally agreed to acquire same, the Purchaser was ultimately unable to procure either a bank loan or a private mortgage loan. The Purchaser also tried to negotiate a lower price for the house with the Vendor, but the Vendor refused to reduce the sale price. The Purchaser argued that the significant reduction in the value of the home constituted a supervening event that altered the nature of the purchase and sale transaction to such an extent that compelling the Purchaser to perform the APS would cause the Purchaser to do something that was radically different than what the parties had contemplated and agreed to, and that therefore the APS was frustrated.

Justice Charney confirmed that Ontario cases have uniformly rejected the buyer's failure to close a real estate transaction, due to the buyer's inability to obtain financing, as constituting a legitimate basis for claiming frustration of the contract. Even adducing evidence regarding the decline in the housing market, and the corresponding drop in the purchased home's market value or re-sale price, would not be sufficient to establish frustration. Home buyers are deemed to know that property values can go up or down, because fluctuations in the housing market are to be expected, and accordingly any decrease in value that may be beyond a buyer's control, and that was not what the buyer had expected would occur, does not make it an "unforeseen supervening event", and accordingly such fluctuations in the real estate market do not alter the obligations of either party to the agreement of purchase and sale, unless there is specific language in the contract to address this issue (such as language making the completion of the transaction conditional on the buyer procuring satisfactory mortgage financing). Furthermore, a seller's refusal to negotiate a lower price for the buyer in a falling market does not constitute a failure of the seller to mitigate its damages. Simply put, it's not reasonable for the seller to be obliged to reduce the sale price to the defaulting buyer (and to correspondingly reduce the loss that the seller may claim from the buyer), by effectively "re-selling the property" at a lower price to the same buyer, and thereafter suing the buyer in damages for the difference in sale price.

Finally, Justice Charney also confirmed in the Arista Homes case that the Purchaser's claim for relief from forfeiture is not applicable in a case where the innocent Vendor has suffered damages in excess of the forfeited deposit amount, and where the amount of the forfeited deposit is correspondingly deducted from the aggregate amount of the damages so claimed.

Tabrizi v. Majesty Development Group Inc., 2022 ONSC 1933

The parties entered into an agreement of purchase and sale (the "**APS**") with respect to the property, and the Purchaser subsequently failed to complete the transaction on the date scheduled for closing. The Vendor ultimately re-sold the property to another buyer, and received $610,000 less for the property than the purchase price outlined in the APS. The Vendor sued the Purchaser in damages for breach of contract, including the loss of bargain, and for outstanding carrying costs of the property, and various other ancillary expenses associated with the breach. The Purchaser took the position that the Vendor wrongfully withheld its consent to permit the Purchaser to apply for a severance consent in respect of the property prior to closing, with the view to increasing the value of the property in order to assist the Purchaser with subsequently re-selling same to a third party, and that such refusal on the part of the Vendor justified the Purchaser's decision not to close.

The court held that the severance of the property was never a term or condition of the APS, nor a condition of closing the purchase and sale transaction, nor was it fundamental to the APS, and accordingly the Vendor's refusal to cooperate with the Purchaser's severance request was not a legitimate basis for the Purchaser to refuse to complete the transaction. Justice De Sa noted that the Purchaser's decision to refuse to close related primarily (if not exclusively) to the sharp drop in the real estate market, and the corresponding failure of the Purchaser to obtain the requisite financing needed to complete the transaction with the Vendor. Justice De Sa also confirmed that the jurisprudence makes it abundantly clear that a drop in the market value of the purchased property, between the date of acceptance of the APS and the scheduled closing date, is not a valid basis for relieving the Purchaser from his or her contractual obligations.

The court also referred, with approval, to the judgment of Morden J.A. in the appellate court decision of *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd. (1978) 20 O.R. (2d) 401,* as the

principal authority on the assessment of damages for breach of an agreement of purchase and sale involving real property. As a general rule, in a falling market, the court should award the innocent seller damages in an amount equal to the difference between the contract price, and the highest price attainable within a reasonable time after the scheduled closing date, following the seller's reasonable efforts to sell the property commencing thereon. However, if the seller retains the property in order to speculate on the market, then damages will be assessed as of the closing date. Furthermore, the duty to mitigate requires the innocent seller to take reasonable steps to minimize its losses, and in assessing the innocent party's mitigation efforts, the courts will be relatively tolerant, and the innocent seller need only be reasonable, not perfect, and will not be obliged nor expected to do anything that is risky or improvident. The defaulting buyer has the burden of proof to show that the seller failed to make reasonable efforts to mitigate, and that burden may entail leading expert evidence to show that the seller's efforts were unreasonable, and that the seller could have obtained a higher price had they acted reasonably. The innocent seller will usually receive the benefit of the doubt from the court, because it doesn't lie in the mouth of the defaulting buyer to be overly critical of the good faith attempts by the seller to avoid difficulties caused by the buyer's breach of contract.

In the Tabrizi case, the Vendor tried re-selling the property for several months, but only received a single offer. The Vendor then made several upgrades to the house, in order to attract more buyers. The Vendor also incurred financing costs associated with another property, which was necessitated by the Purchaser's failure to close on the purchase and sale transaction with the Vendor. However, the court ultimately ruled that any damages or losses associated with the borrowing of monies in connection with the other property were too remote, and did not arise naturally as a result of the Purchaser's breach of contract, and since such borrowing costs were not in the reasonable contemplation of the parties at the time that the APS was entered into, they were held not to be

recoverable from the defaulting Purchaser. Simply put, it's not what the parties knew or contemplated at the time of the breach, but rather whether, at the time of contract formation, the parties reasonably contemplated that the type of damages so claimed by the innocent Vendor would be the probable result of a breach of contract committed by the defaulting Purchaser. The court also held that the upgrades and improvements made to the property were not adequately or sufficiently connected to the Purchaser's breach of contract, so as to warrant damages against the defaulting Purchaser for same, particularly since the deficiencies to the property had already existed prior to the original sale of the home to the Purchaser, and therefore if the improvements were required to be implemented, then same were a function or bi-product of the property itself, and not triggered by the Purchaser's breach of contract.

Gagliardi v. Al-Karawi, 2023 ONSC 6853

This case involved a failed real estate transaction, where the Purchaser had a change of heart, and backed away from the deal almost immediately after the parties had entered into the agreement of purchase and sale (the "**APS**"). The Purchaser never paid the agreed-upon deposit of $40,000, as required by the APS, and the Vendor ultimately re-sold the property to another buyer who paid approximately $12,000 less than the Purchaser had agreed to pay.

At the outset, Justice Chown confirmed that the rationale for the forfeiture of the deposit emanates from the principle that the deposit effectively stands as a guarantee for the performance of the buyer's obligations under the contract, and in those circumstances where all or part of the deposit monies have not yet been paid, the Canadian jurisprudence confirms that any unpaid deposits are recoverable as a debt of (and as a debt due from) the buyer. Consequently, the innocent seller is entitled to recover judgment for any unpaid deposit monies that the buyer had contractually agreed

to pay, and this effectively precludes the buyer from being in a better position, by breaching his or her agreement to pay the deposit monies as and when same are due and payable. Simply put, the prevailing caselaw affords no exception or excuse (nor any leniency) for a buyer who changes his or her mind about completing the purchase and sale transaction after entering into a binding agreement of purchase and sale.

The defaulting Purchaser asked the court to grant relief from forfeiture, and Justice Chown confirmed that cases where relief from forfeiture has been granted are exceedingly rare, and that two things are necessary for equity to relieve the defaulting buyer from the foreiture of the deposit, namely: (i) the sum forfeited must be out of all proportion to the damages that the innocent party has (or may) ultimately incur, by reason of the breach or default; and (ii) it must be unconscionable for the seller to retain the forfeited monies. Relief from forfeiture has been declined in cases featuring the following factors, namely: (i) the buyer's attempt to back out of the purchase and sale contract because of a falling market; (ii) the buyer's refusal to pay a modest amount to cover the seller's additional legal fees incurred, consequent upon the buyer's default; (iii) the failure on the part of the defaulting buyer to make a timely request to extend the closing date; (iv) the buyer's failure to promptly reply to inquiries from the seller about the status of the buyer's financing arrangements; and (v) the buyer's candid acknowledgment that it has been unable to secure the financing needed to complete the transaction.

Justice Chown also confirmed that Canadian courts have effectively placed little to no weight on the extent of the disparity between the amount of the damages suffered or incurred by the innocent seller (if any), and the amount of the deposit so forfeited as a consequence of the buyer's default. As for the element of unconscionability, the Supreme Court of Canada confirmed in the case of *Uber v. Heller, 2020 SCC 16*, that the doctrine of unconscionability requires both an inequality

of bargaining power (based on the parties' relative sophistication and business acumen, and corresponding vulnerability), and a resulting improvident deal or a substantially unfair bargain. However, to date, there are no reported real estate cases in Ontario where a court has found the agreed-upon deposit to be so large as to be unconscionable, in and of itself, and the Ontario jurisprudence has also expressly confirmed that deposits not exceeding 28% of the total purchase price have been judicially considered to be reasonable deposits, and the courts have declined to grant relief from forfeiture in connection therewith. Simply put, if the buyer of real estate has agreed to pay a deposit on account of the purchase price, and subsequently fails to proceed with the purchase and sale transaction, and correspondingly breaches his or her contractual obligations, then it is difficult to see how it could be unconscionable to make the defaulting buyer pay what he or she had already expressly agreed to pay, and reasonably expected to pay. While Justice Chown did observe that it seemed unfair to him for the Vendor to recover and retain the full $40,000 deposit from the defaulting Purchaser in the circumstances of this case, Justice Chown also confirmed that unconscionability should be measured by reference to precedent, and not by an individual judge's notion of what is fair in any particular case, because lawyers and the general public require predicable outcomes in cases involving aborted real estate transactions.

400 East Mall GP Inc. v. Omololu, 2024 ONSC 703

This case involved a reference for the calculation of damages, resulting from a failed real estate transaction pertaining to a newly-constructed residential townhouse condominium, where the Vendor terminated the agreement of purchase and sale (the "**APS**") following the breach of contract committed by the Purchaser, and attempted to resell the property in an effort to mitigate its damages. The Vendor was seeking damages from the defaulting Purchaser which included various closing

costs and/or adjustments to the purchase price which the Vendor was legally entitled to charge the Purchaser, pursuant to the terms and provisions of the APS.

At the outset of the case, the court confirmed that when a buyer fails to close on a residential real estate transaction, and the seller consequently resells the property, the seller's damages for the loss of the value of the bargain would ordinarily be calculated as the difference between the purchase price in the original transaction, and the purchase price ultimately attained in the resale transaction, together with any consequential damages incurred by the seller resulting from the breach (such as the carrying costs of the property post-breach, and the seller's costs associated with the re-listing and resale of the property). However, Justice Brown confirmed that where the agreement of purchase and sale allows the seller to contractually charge the buyer with certain closing costs, as an adjustment to the purchase price (or as an adjustment to the balance due on closing), and then the seller subsequently enters into a similar agreement of purchase and sale for the same property with a new buyer, consequent upon the original buyer's default, then the seller will be precluded from claiming said closing costs and/or closing adjustments as part of the damages payable by the defaulting first buyer, because the seller is entitled to collect same from the subsequent buyer when that transaction closes. In other words, the innocent Vendor was judicially precluded from saddling the defaulting Purchaser with these additional closing costs and/or closing adjustments as part of the Vendor's damage claim, since the Vendor was legally entitled to collect same from the new buyer, as part of the Vendor's exercise of mitigating its damages.

Liddell v. Mousavi, 2024 ONSC 6431

This case involved an aborted residential real estate transaction, where the Purchaser failed to complete the transaction on the scheduled closing date set forth in the agreement of purchase and

sale (the "**APS**"), due to the fact that the Purchaser's money was retained in the Purchaser's bank account in Afghanistan (and was not transferred to the Purchaser's bank in Canada). The Vendor refused to grant an extension of the closing date, unless certain conditions imposed by the Vendor in connection therewith were satisfied or fulfilled by the Purchaser, but the Purchaser did not agree to those conditions. The Purchaser thereafter claimed that due to the subsequent withdrawal of the American armed forces in Afghanistan, and the corresponding control of the country that vested in the Taliban, the banking system in Afghanistan was suspended, and the Purchaser was consequently unable to retrieve the necessary closing funds, and that such events were out of the Purchaser's control, and consequently triggered the frustration of the contract.

Justice Coats confirmed that the doctrine of frustration, in the context of an agreement of purchase and sale, operates to relieve the parties of their bargain only if an unforeseeable supervening event has occurred, without the fault of either party, which renders the performance of the contract radically different from what the parties had bargained for, and where the disruption or change (which affects the nature, meaning, purpose, effect and consequences of the contract) is permanent (and not temporary or transient), and no provision in the contract exists to address such an event or situation. However, there can be no frustration if the supervening event was contemplated by the parties, or reasonably foreseeable, at the time of contract formation, and was either specifically addressed by certain provisions in the contract, or was deliberately chosen not to be addressed or provided for in the contract.

Justice Coats noted, with approval, the decision in the case of *Bang v. Sebastian 2018 ONSC 6226*, where the court in Ontario expressly rejected, as an unforeseeable supervening event, the sudden downward fall in the housing market, and the buyer's inability to qualify for financing as a consequence thereof. In other words, buyers are reasonably deemed to know that property values

can go up or down, because the housing market is always a potentially-fluctuating one, and accordingly a decrease in a property's fair market value may well be beyond a buyer's control, but the buyer must nevertheless be able to procure the financing needed to complete the transaction, regardless of any ultimate decrease in property values. Simply put, a buyer's inability to procure the requisite financing to complete the purchase and sale transaction, due to a fall in the real estate market evidenced by declining property values, or otherwise, will not trigger the frustration of the contract, nor entitle the buyer to resile from the transaction with impunity.

In this case, the Purchaser had the onus of establishing that the performance of the APS, as originally agreed upon, would be impossible, but ultimately the court did not consider the disruption in the Purchaser's inability to access funds from the Purchaser's bank account in her home country as permanent, nor as an unforeseeable event, and it did not fundamentally or radically alter the nature, meaning, purpose, effect and consequences of the APS. Justice Coats reasoned that the Purchaser's default was essentially due to the Purchaser's inability to borrow a sufficient amount of money from a Canadian bank or financial institution to complete the purchase and sale transaction, and that such failure on the part of the Purchaser to procure the requisite financing did not amount to frustration. Furthermore, the court confirmed that the Vendor was entitled to refuse the Purchaser's request for an extension of time to complete the transaction, where the extension was sought to enable or facilitate the Purchaser's procurement of the requisite financing.

Finally, the court held that the doctrine of *force majeure* did not apply to relieve the Purchaser of her contractual obligations, particularly in the absence of a *force majeure* clause expressly set forth in the APS.

Madison Homes Cornell Rouge Ltd. v. Jia Lin Huang and Pingkai Wu, 2025 ONSC 657

This case involved an agreement of purchase and sale regarding a pre-construction home, entered into between the builder and the home buyer (the "**APS**"), which failed to be completed due to the default of the Purchaser. The Purchaser (a mother and her daughter) alleged that they had no interest in buying the home when they attended at the Vendor's sales office, but simply wanted to view the model home for design ideas, and correspondingly attributed the purchase of the home to the undue pressure and coercion exerted by the Vendor's sales representative. The facts of the case disclosed that the two individuals comprising the Purchaser had acquired the home as an investment, and had no intention of personally living in the home on or after closing. Unfortunately, the mother took ill, and could not assist the daughter in procuring the financing needed to complete the purchase and sale transaction.

Justice Callaghan confirmed that not all pressure, economic or otherwise, is recognized in law as constituting duress, and accordingly it must be pressure which the law does not regard as legitimate, and it must be applied to such a degree as to amount to a "coercion of the will", and thereby effectively vitiates the consent of one of the contracting parties. Such duress makes the contract voidable at the instance of the party subjected to same, unless that party subsequently affirms the impugned contract at a time when he or she is no longer the victim of the duress. In this case, the court held that although the Vendor had a superior bargaining position, that superiority, in and of itself, did not constitute or establish duress, and there was no evidence of unfair, excessive or coercive conduct on the part of the Vendor or its sales representative. Communicating a sense of urgency to buy a preferred home in a competitive marketplace, without more, does not amount to undue influence, nor does it constitute an unconscionable transaction.

The Purchaser also alleged that because she was not fluent in English, and never read the APS, that she should not be bound by the contractual obligations thereunder. However, the court did not accept the argument that the Purchaser could not protect her interest by either reading the documents, or by seeking experienced legal counsel to assist the Purchaser. Simply put, the daughter's failure to read the APS was not a result of an inability to comprehend the APS, but rather reflected that she was content with the purchase until she and her mother were unable to obtain financing for the closing. Justice Callaghan did not find that there was any inequality of bargaining power between the contracting parties, nor that this was an improvident purchase. Simply put, the Purchaser's failure to obtain the requisite financing was neither unusual, nor an unexpected event, in the world of home sales.

Arista Homes (Boxgrove Village) Inc. v. Ding, 2025 ONSC 2581

This case involved an aborted residential real estate deal, where the Purchaser failed to complete the transaction in accordance with the terms and provisions of the agreement of purchase and sale (the "**APS**"), due to the Purchaser's inability to obtain the requisite financing, and as a consequence of such default, the deposit monies (totaling the sum of approximately $107,280.00) were forfeited to the Vendor as its liquidated damages, and not as a penalty. The Vendor subsequently re-sold the property, sustaining a loss of approximately $6,287.00, and also incurred carrying costs and other expenses, thereby resulting in total damages amounting to $27,788.00.

The defaulting Purchaser sought relief from forfeiture of the deposit, and although the damages sustained by the Vendor were judicially considered to be relatively *de minimus*, Justice Casullo held that the deposit (representing 7.7% of the purchase price) was not out of all proportion to the damages reasonably anticipated to be sustained due to the purchaser's failure to complete the

transaction. The court also confirmed that there was no indicia of unconscionability, inasmuch as there was no inequality of bargaining power, nor did the APS evidence a substantially unfair bargain, and the Purchaser was not a vulnerable buyer who might be easily misled by the Vendor, but rather was a sophisticated party with professional expertise, and was at all times represented by a solicitor. The court accordingly declined to grant the Purchaser relief from the forfeiture of the deposit.

Datamy Inc. v. Yung, 2025 ONSC 2860

This case involved an aborted residential real estate transaction where the Purchaser failed to make the second deposit in the amount of $140,000 (the "**Second Deposit**") that was due and payable, and therefore breached a key term of the agreement of purchase and sale between the contracting parties (the "**APS**"). The Purchaser's default ultimately triggered the Vendor's termination of the contract, and the Vendor subsequently re-sold the property to a third party at a lower price, in an effort to mitigate its damages.

The issue in this case was whether the Vendor was entitled to sue the defaulting Purchaser for the amount of the Second Deposit, or whether its claim for damages is limited to the difference between the original price under the APS, and the subsequent sale price of the property, plus the additional carrying costs incurred by the Vendor in connection therewith, less the amount of the first deposit already paid and forfeited.

Justice Charney confirmed that since the Vendor's right to the Second Deposit had accrued before the Vendor accepted the Purchaser's repudiation of the contract (and the Vendor's acceptance of the defaulting Purchaser's repudiation correspondingly occurred only after the Purchaser's failure to pay the Second Deposit when due), the Vendor was therefore legally entitled to sue for an amount equal to the unpaid Second Deposit so owed under the contract.

The Purchaser argued that if the Vendor can sue for the unpaid deposit, then the Purchaser should be granted relief from forfeiture, but the court ultimately held that it was not unconscionable to make the Purchaser pay what it had already agreed to pay, and correspondingly expected to pay. In light of the fact that the total deposits payable under the APS amounted to only 5% of the total purchase price, and was therefore judicially considered to be reasonable and at the lower end of the spectrum of deposit cases, there was no basis to grant the defaulting Purchaser relief from forfeiture.

Part II - Ontario Court of Appeal Cases

1854329 Ontario Inc. v. Cairo, 2022 ONCA 744

This case involved an aborted real estate transaction in connection with the sale of a commercial building, where the Purchaser failed to close the transaction due to its inability to obtain the requisite financing on or before the scheduled closing date, and the appeal focused on the defaulting Purchaser's claim for relief from forfeiture with respect to the deposit totaling $400,000.

The Purchaser had waived the financing condition set forth in the agreement of purchase and sale, but thereafter the Purchaser's intended financing fell through, and the Purchaser argued that its bank did not proceed with the loan because it thought that the Covid virus pandemic would negatively affect the Purchaser's business. The Purchaser then requested a six month extension of the closing date (presumably in order to find alternate financing), but said request was denied by the Vendor.

With respect to relief from forfeiture, the motion judge had already considered the issues of proportionality and unconscionability, and determined that the deposit of approximately 5.5% of the sale price was commercially reasonable, and was not disproportionate to the actual damages incurred, and that there was no evidence of any inequality of bargaining power, nor any evidence of

a substantially unfair bargain. Moreover, the motion court judge found it significant that the Purchaser had not offered any compensation whatsoever to the Vendor for the extension of the closing date that the Purchaser was seeking, and from the perspective of the motion court judge, the Vendor did not act unreasonably.

The motion court judge also confirmed that by waiving the financing condition without having the cash in hand, the Purchaser thereby assumed the risk of the transaction falling through, and that this was a risk not limited to the pandemic.

The Ontario Court of Appeal did not see any errors in the motion court judge's analysis and conclusions, and accordingly the Purchaser failed to meet the burden of showing that this was an exceptional case that merited relief from forfeiture.

More v. 1362279 Ontario Ltd. (Seiko Homes), 2023 ONCA 527

This case involved the purchase of three adjacent town homes built and sold by the Vendor, by three individual purchasers, pursuant to three identical agreements of purchase and sale which provided for custom specifications in connection with the completed homes. Each of the three agreements of purchase and sale contained the usual "time is of the essence" clause, but did not stipulate a closing time on the scheduled closing date of October 1st, 2020. However, pursuant to the document registration agreement governing the completion of each of these three transactions, the release deadline (ie. for funds and closing documents) was stipulated to be 6:00 p.m. on the closing date. As it turned out, the delivery of the requisite closing funds via wire transfer, by the bank of the solicitor acting for the Purchasers, was delayed due to a combination of Covid 19 protocols implemented by said bank, fewer staff, reduced hours and by the end-of-the-month spike in the volume of transactions, and accordingly the funds were not received by the Vendor's solicitor

before 6:00 p.m. on the closing date. The Vendor's solicitor proceeded to fax a letter to the solicitor for the Purchasers repudiating the transactions just after 5:00 p.m. on the closing date. Nevertheless, the Vendor's solicitor ultimately received the requisite closing funds by wire transfer the following morning, and a closing date of October 2nd was correspondingly proposed by the solicitor for the Purchasers. However, the Vendor rejected all attempts to extend the closing date, and refused to complete the purchase and sale transactions thereafter (presumably because the market value of the completed homes had risen sharply, subsequent to the date of execution of the agreements of purchase and sale), and the Vendor's solicitor attempted to return the mortgage funds so wired, but not the deposit amounts.

The Purchasers pursued claims for specific performance of the agreements of purchase and sale, while the Vendor sought the dismissal of the claims of the Purchasers, and the forfeiture of their respective deposit monies.

The Vendor had argued (both before the motion court judge and on appeal) that because the Teraview system does not permit transfers to be electronically registered past 5:00 p.m. on any business day, the closing funds therefore had to be tendered by or on behalf of the Purchasers by no later than 5:00 p.m. on the closing date. However, the motion court judge found that the foregoing position was contradicted by the document registration agreement, and confirmed that the Vendor could not rely on the "time is of the essence" clause since there was no specific time for closing set out in the respective agreements of purchase and sale.

Justice Coroza, on behalf of the unanimous appellate court, did not see any errors in the motion court judge's analysis and conclusions, and confirmed that the "time is of the essence" clause does not impose a time limit itself, but rather dictates the consequences that flow from failing to comply with any time limit or deadline stipulated in the agreement of purchase and sale. The mere

presence of the clause is of limited assistance to the court in interpreting the agreement of purchase and sale, where the contract is otherwise silent on the deadline to perform the obligations thereunder. The appellate court ultimately concluded that the Vendor had terminated the transactions prematurely, and that it was open to the motion court judge to find that during the pandemic, it was common practice for lawyers to work together to complete the rest of the closing steps after the closing of the Teraview system and before midnight on the closing date, and that purchase and sale transactions would usually be honoured despite minor delays in the delivery of the closing funds. In the case under appeal, the Vendor clearly pounced on the delay in a totally unexpected fashion.

Having found that the Vendor repudiated the contracts just after 5:00 p.m. on October 1st, the appellate court confirmed that the Purchasers were relieved of the requirement of tender at any point in time thereafter, and therefore the fact that the funds were ultimately delivered the day after closing became irrelevant. In short, the Vendor anticipatorily breached the agreements of purchase and sale before the midnight closing deadline, and the time of the essence clause was of no assistance, and there was no basis to disturb the motion court's finding that the Vendor had acted unreasonably and in bad faith under the circumstances of this case.

The Rosseau Group Inc. v. 2528061 Ontario Inc., 2023 ONCA 814

This case involved an aborted purchase and sale transaction in connection with vacant land that was intended for future residential development, and the purchase price was $350,000 per acre, based on the number of developable acres within the overall property being acquired, and ultimately culminated in a final adjusted purchase price of $6.6 million. When the transaction was not completed on the scheduled closing date, the Purchaser proceeded to sue the Vendor for breach of contract, and the trial court found that because the Vendor had breached the agreement of purchase

and sale, the innocent Purchaser was entitled to damages, and also confirmed that because the property was worth far more on the closing date than the contracted purchase price, it was an appropriate case to depart from the normal measure of damages, and to award the Purchaser over $11 million dollars, as a reasonable estimate of the Purchaser's lost expected profit to be derived from the future development of the Purchaser's intended housing project. The Vendor appealed the trial court decision, and the primary issue on appeal was whether the damages ultimately awarded to the innocent Purchaser had been properly assessed.

At the outset, Justice Zarnet, on behalf of a unanimous appellate court, confirmed that a trial judge's assessment of damages attracts considerable deference on appeal, but an assessment made on the basis of an error of principle or law may be overturned on appeal. The appellate court also confirmed that the normal measure of damages for a failed real estate transaction is the difference between the contract price on the one hand, and the market value of the land as of the assessment date on the other hand, with the latter typically being the date of the breach or the scheduled closing date. The foregoing methodology for determining and crystalizing the innocent party's damages creates commercial certainty, and promotes efficient behaviour and reduces speculation. However, the court may set a later date for the assessment of damages, if the innocent party seeking damages can show the court that the normal measure of damages is somehow inadequate to fairly measure and compensate for the true loss that has been suffered or incurred by the innocent party, but the presumptive methodology for measuring damages will not be easily displaced. Postponing or deferring the assessment date for damages, beyond the date of the breach or the scheduled closing date, will rarely be approved or endorsed by the court, and typically only occurs in order to coincide with the date when the court believes or determines that the innocent party could reasonably have been expected to re-enter the market in order to mitigate its damages.

In this case, the fact that the property in question had known development potential, meant that damages for the loss of the value of that potential (namely the land's overall development value or yield) would not be too remote. However, Justice Zarnet confirmed that while the remoteness test deals with the type of loss that is recoverable, the methodology for measuring damages is strictly focusing on how the loss is to be quantified. In this case, the normal measure of damages would compensate the innocent Purchaser for the loss of the market value of the lands as at the closing date, less the purchase price that had to be paid to acquire said lands, and accordingly the concept of the market value of the land essentially takes into account the value that the land has because it can be developed. Assessing market value for the purpose of quantifying damages for breach of the agreement of purchase and sale generally requires appraisal evidence, which takes into account the value of the property based on its reasonable, highest and best use, which would (and should) include the future residential development of said lands. In other words, the Purchaser's compensation for the breach of the APS should take into account the development value of the lands, because such loss is not too remote under the circumstances surrounding the formation of the contract, but absent anything that suggests that the normal measure of damages would not address development value, there is no substantive reason in the case at bar to require departure from the normal measure of damages.

The court of appeal ultimately ruled that the trial judge had erred in not applying the normal measure of damages, and consequently ordered that the judge's damage award must be set aside, and directed that a new hearing be scheduled in order to assess the damages based on the difference between the purchase price and the market value of the lands as of the date set for closing.

Mouralian v. Grouleau, 2024 ONCA 342

This appeal involves an agreement of purchase and sale (the "**APS**") that was entered into with respect to a residential property, in circumstances where the Purchaser was unable to obtain the necessary financing to complete the purchase and sale transaction with the Vendor. The Vendor subsequently re-sold the property to another buyer for more money, and the Purchaser thereafter pursued a claim for the return of her deposit, and sought relief from forfeiture.

At the outset, the motion court judge confirmed the dictum in the appellate court decision of *Azzarello v. Shawqui, 2019 ONCA 820,* namely that when a buyer fails to complete a real estate transaction, the deposit is forfeited to (and in favour of) the seller, without the necessity for the seller to prove that it suffered any damages consequent upon the buyer's default, because the deposit is not just part payment of the purchase price, but also constitutes a security mechanism to incentivize the buyer to complete the transaction. Even when the seller suffers no loss, the deposit may nevertheless be retained by the seller, subject to the buyer's right to thereafter seek judicial relief from forfeiture. In turn, relief from forfeiture is an equitable remedy that has been codified in Section 98 of the *Courts of Justice Act R.S.O. 1990, as amended,* which stipulates that a court may grant relief against penalties and forfeitures on such terms as to compensation (or otherwise) as are considered just.

The motion court judge referred (with approval) to the two-part test for granting relief from forfeiture articulated by the appellate court in *Redstone Enterprises Ltd. v. Simple Technology Inc. 2017 ONCA 282,* namely whether the forfeited deposit is out of all portion to the damages suffered or incurred by the innocent seller, and whether it would be unconscionable for the seller to retain the deposit in the circumstances of the case under consideration. The court confirmed that the finding of unconscionability will be an exceptional one, strongly compelled on the facts of the case being decided, and the indicia of unconscionability will typically depend upon (or be identified by) the

following factors, namely an inequality of bargaining power; a substantially unfair bargain; the relative sophistication of the parties; the existence of bona fide negotiations leading to the formation of the contract; the nature of the relationship between the parties; the gravity of the breach; and the conduct of the parties. Furthermore, in the decision of *Uber v. Heller 2020 SCC 16,* the Supreme Court of Canada confirmed that unconscionability requires both an inequality of bargaining power, and a resulting improvident or inadvisable bargain.

In this case, the deposit represented 5% of the agreed-upon sale price, and the motion court judge confirmed that this was a very typical deposit in a residential real estate transaction, and the defaulting Purchaser correspondingly failed to satisfy the first part of the test for relief from forfeiture, because the deposit in question was not out of all proportion to the damages anticipated to be suffered by the Vendor upon the Purchaser's default. As for the second part of the test for relief from forfeiture, the court noted that differences in wealth, knowledge or experience may be relevant to the consideration as to whether an inequality of bargaining power exists between the contracting parties, such that one party cannot adequately protect their own interests in the contracting process. The Purchaser also argued that her poor mental state (which contributed to her not appreciating the legal significance and consequences of the agreement of purchase and sale) gave rise to an inequality of bargaining power that ultimately merited her claim for relief from forfeiture. However, the motion court judge noted that the parties had no relationship with each other, and that nothing about the negotiation of the agreement of purchase and sale was unusual, and that the Vendor was unaware that the Purchaser was suffering from some form of mental infirmity. Each of the parties to the APS had a real estate agent advising them, and accordingly the APS was negotiated at arms length in a bona fide process. Furthermore, at the time the APS was entered into, the Purchaser owned two other properties, and therefore had at least some experience buying real

estate. All of the foregoing factors led the motion court judge to conclude that the Purchaser was able to protect her interests in the contracting process, and therefore there was no inequality of bargaining power, and the purchase and sale transaction was not improvident. While the Purchaser encountered unfortunate circumstances which impacted her ability to sell her other properties, and impaired her ability to obtain the financing needed to close the purchase and sale transaction with the Vendor, that did not render the Vendor's retention of the deposit unconscionable. Simply put, the deposit should not be considered to constitute a windfall for the Vendor, in light of the fact that the deposit was not meant to be construed as damages for the failed transaction, but rather as security intended to encourage and incite the Purchaser to complete the transaction that she willingly entered into.

The Purchaser appealed the decision to the Ontario Court of Appeal, but the appellate court concluded that there were no reversible errors made by the motion court judge in her analysis or conclusions. While the aggrieved Purchaser did encounter unfortunate circumstances which impacted her ability to sell her other properties, and to obtain the financing that she needed to complete the real estate transaction with the Vendor, nevertheless the bargain between the Purchaser and the Vendor was not improvident. The Ontario Court of Appeal confirmed that it was not unconscionable for the Vendor to retain the deposit under the circumstances of this case, and that the test for relief from forfeiture was not established.

Naeem v. Bowmanville Lakebreeze West Village Ltd., 2024 ONCA 383

In this case, the purchase and sale transaction was not completed on the extended closing date, and the Vendor took the position that the Purchaser had breached the contract, that the

agreement was thereby terminated, and that the deposit was forfeited to the Vendor as its liquidated damages and not as a penalty. The Purchaser claimed relief from forfeiture of her deposit in the amount of $82,916.00, and such relief was ultimately granted by the motion court judge. The motion court judge made note of the fact that the Vendor was a sophisticated builder, in the business of negotiating agreements of purchase and sale with prospective home buyers, whereas the buyer was a widow who worked two jobs while undergoing cancer treatment in order to save enough money to put her deposit down on a home for her family. Furthermore, the motion court judge took into account the fact that the Vendor had apparently suffered no loss as a result of the transaction not closing. Finally, and most significantly, the motion court judge was sharply critical of the Vendor's conduct in the years before the transaction fell through, after having extended the closing date twice, and not telling the Purchaser that she was not legally obliged to sign an amendment to the agreement of purchase and sale evidencing the extension of the closing date, and that the agreement of purchase and sale was voidable at the instance of the Purchaser if she didn't agree to (or concur with) the Vendor's extension request. The Vendor's sales representatives had effectively misled the Purchaser into thinking that she had no choice but to set a new closing date.

The Vendor appealed the decision, arguing that the forfeited deposit was not out of all proportion to the damages suffered by the Vendor, and that it would not be unconscionable for the Vendor to retain the deposit.

Justice Rensburg, on behalf of the unanimous appellate court, confirmed that although the list of indicia of unconscionability is not closed, the case law suggests that such factors as the inequality of bargaining power, a substantially unfair bargain, the relative sophistication of the contracting parties, the existence of bona fide negotiations culminating in the execution of the contract, the nature of the relationship between the parties (if any), the gravity of the breach, and the

corresponding conduct of the contracting parties, are all relevant factors to the determination of unconscionability. However, the court of appeal also affirmed that although the Purchaser's conduct will often be highly relevant to the question of whether it would be unconscionable to permit the Vendor to keep or retain the deposit, it is only one factor to be considered, but it's not a pre-condition or a prerequisite for obtaining relief from forfeiture that the party seeking relief must demonstrate that they were not to blame for the contractual breach.

In the end, the appellate court did not see any errors in the motion judge's analysis and conclusions, and held that it would be unconscionable to permit the Vendor to retain the deposit under the circumstances of this case, and correspondingly granted the Purchaser relief from the forfeiture of the deposit, in its entirety.

In the Matter of the Bankruptcy of A. Pleterski, 2024 ONCA 711

In this case, the Purchaser agreed to buy a commercial property from the Vendor for $5.5 million dollars, and paid a deposit of $500,000.00. Nearly all of the deposit monies came from funds that one of the individuals comprising the Purchaser (namely Aiden Pleterski) had obtained from investors who believed that their money would be invested in crypto-currency, and who had not authorized their funds to be used to acquire real estate. Before the scheduled closing date of September 28th, 2022, some of the creditors of Aiden Pleterski successfully applied to have him and his company declared bankrupt, and the firm of Grant Thornton Limited (hereinafter referred to as "**GTL**") was appointed as the trustee in bankruptcy. Before the closing date, GTL advised the Vendor that they would not be completing the transaction, and the Vendor treated this as an anticipatory breach, and a few months after the closing date the Vendor re-sold the property to another buyer for $300,000.00 more than the original price. However, the Vendor also maintained

that before it re-sold the property, the Vendor had to spend money repairing damage thereto that had been caused by the Purchaser.

GTL moved for relief from forfeiture of the $500,000.00 deposit, and the motion court judge granted this relief, and ordered that the deposit be returned to GTL for the benefit of the creditors in the bankruptcy. Applying the two part test approved by the Court of Appeal in *Redstone Enterprises Ltd. v. Simple Technology Inc. 2017 ONCA 2082*, the motion court judge considered whether the forfeited deposit was out of all portion to the damages suffered, and whether it would be unconscionable for the Vendor to retain the deposit. The judge concluded that both factors weighed in favour of directing that the full amount of the deposit be returned to GTL. The fact that the Vendor would realize a net profit of $135,500.00, while the investor creditors of Aiden Pleterski would recover *de minimus* amounts on their investment, weighed heavily in the judge's determination.

The Vendor appealed the decision granting relief from forfeiture, and argued that it was an error for the motion court judge to take the interests of the creditors into account when assessing the equities of the situation, since the creditors were not parties to the agreement of purchase and sale. Justice Miller, on behalf of the unanimous appellate court, confirmed that the motion court judge was not obliged to focus his attention as narrowly as the Vendor contended, because the analysis of unconscionability requires the court to consider the full commercial context of the transaction, including the fact that at least 98% of the deposit came from investor funds. Moreover, the fact that allowing the Vendor to retain the deposit would give it a substantial windfall, after having already made a sizeable profit by selling the property to a new buyer at a higher price, was also a legitimate consideration in the context of determining whether it would be unconscionable for the Vendor to retain the deposit.

The appellate court also noted that while deposits are intended to motivate the contracting parties to carry through with their bargain, in the circumstances involving the appointment of GTL as the trustee in bankruptcy, that rationale had less force than it usually does, in light of the fact that GTL was not a party to the agreement of purchase and sale, and particularly since the investors were the true source of nearly all of the deposit monies that were forfeited to the Vendor, and they had never agreed to have their invested funds utilized in connection therewith.

The Vendor also argued that GTL was not really an innocent party, in light of the fact that GTL had deliberately caused the breach of contract by choosing not to complete the purchase and sale transaction as and when scheduled. However, the appellate court rejected the argument that there is an absolute rule that bars a party who caused a breach of contract from ever obtaining relief from forfeiture. Relief from forfeiture is an equitable and discretionary remedy, and absent a legal or palpable and overriding error, it is not for the appellate court to substitute its discretion for that of the trial judge. On the facts of this case, as found by the motion court judge, the equities favoured returning the full amount of the deposit to GTL, for the benefit of the creditors whose money had been misappropriated by the Purchaser to pay the deposit in the first place. In the end, the appellate court did not see any errors in the motion court judge's findings and conclusions, and held that it would be unconscionable to permit the Vendor to retain the deposit under the circumstances of this case.

Adler v. Woitowich, 2025 ONCA 108

This appeal arose from a summary judgement motion involving a residential purchase and sale transaction, where the agreement of purchase and sale was executed by the parties thereto on December 3rd, 2021 (the "**APS**"), and correspondingly established a closing date of February 17th,

2022. However, on December 7th, 2021, the Vendor advised the Purchaser that it had changed its mind, and no longer wanted to sell the house and complete the transaction. On January 11th, 2022, the Purchaser accepted the Vendor's anticipatory breach of the APS, and requested the return of the deposit so paid. After the Vendor's repudiation of the APS, the Purchaser actively searched to acquire another comparable property, and subsequently purchased an alternate property on April 25th, 2022, and thereby successfully mitigated the Purchaser's damages. Thereafter the Purchaser commenced an action against the Vendor, claiming damages for breach of contract.

The motion court judge confirmed that April 25th, 2022 was the first date that the innocent Purchaser was reasonably able to acquire a home that suited the Purchaser's needs, and that said date was, in fact, the appropriate assessment date to determine and quantify the Purchaser's damages that flowed from the Vendor's breach of contract. The motion court judge also accepted the appraisal evidence (i.e. regarding the value of the home on the assessment date) of the Purchaser's expert, over the appraisal evidence of the Vendor's expert. The Vendor appealed the decision, both with respect to the appropriate date for the assessment of damages, and with respect to the appropriate valuation of the property in light of the conflicting appraisal evidence.

Justice Hourigan, on behalf of the unanimous Court of Appeal, upheld the decision of the motion court judge in all respects, and confirmed that the appropriate measure of the innocent Purchaer's damages was the difference between the sale price of the home (as outlined in the APS), and the home's market value or appraised value as at the date that the Purchaser acquired the alternate property (namely on April 25th, 2022). The appellate court confirmed that in a rising market following the date of the breach, and pursuant to the dictum in *The Rosseau Group Inc. V. 2528061 Ontario Inc., 2023 ONCA 814*, this was an appropriate case to depart from the ordinary date for the assessment of damages (namely the date of the breach or the date of closing), and to postpone

same to a date when it was reasonable for the innocent Purchaser to enter into the marketplace and mitigate its damages, which coincided with the date that the Purchaser acquired the alternate property.

Correa v. Valstar Homes (Oakville Sixth Line) Inc., 2025 ONCA 156

In this case, the Purchaser acquired a newly-built home from the Vendor, pursuant to an agreement of purchase and sale (the "**APS**") that set the closing date to be no later than 5:00 p.m. on January 27th, 2021, provided however that said date may be amended by either mutual agreement or extended by the Vendor. The APS included a "time is of the essence" clause. On December 2nd, 2020, the Vendor extended the closing date to April 20th, 2021, but on the extended closing date, the Purchaser encountered some difficulty in securing the funds for the closing, and requested a one day extension, which was ultimately refused by the Vendor. The Purchaser ended up obtaining alternate private financing, and although the Purchaser's lawyer wired the requisite closing funds to the Vendor's solicitor at 4:52 p.m. on the extended closing date, the closing funds did not ultimately arrive in the Vendor's solicitor's bank account until 5:09 p.m. The Vendor proceeded to terminate the APS invoking the "time is of the essence" clause. The Vendor subsequently offered to "revive" the APS if the Purchaser paid an additional $100,000 plus H.S.T., and the Vendor justified its request by claiming that the value of the property had increased since the APS was signed. The Purchaser agreed to pay the said revival fee, and completed the transaction the next day, but subsequently issued a statement of claim against the Vendor, alleging that the Purchaser had agreed to the Vendor's price increase under protest.

The motion court judge granted summary judgment to the Vendor, and determined that the Vendor was entitled to treat the APS as terminated at 5:01 p.m. on April 20th, 2021, and that the

Vendor did not act in bad faith, and was fully entitled to rely on the "time of the essence" clause in treating the APS as terminated. The motion court judge also confirmed that the Vendor did not impose an improper penalty in connection with the revised APS, but rather found that the "revival fee" of $100,000 plus H.S.T. constituted part of the consideration of an entirely new contract, and therefore rejected the Purchaser's reliance on the common law doctrine regarding the unenforceability of a penalty clause.

Finally, the motion court judge held that the Purchaser did not enter into the revived APS under any economic duress, inasmuch as any economic pressure exerted by the Vendor was not illegitimate (i.e. because it was entitled to enforce the "time is of the essence" clause in the original APS), and the Purchaser had independent legal advice throughout the completion of the transaction.

The Purchaser appealed the decision, and Justice Sossin, on behalf of the unanimous appellate court, confirmed that the motion court judge did not commit any reversible error in his analysis or conclusions. When the closing date of the purchase and sale was unilaterally extended by the Vendor to April 20th, 2021, the altered date did not affect the 5:00 p.m. deadline for closing on said extended closing date, and this 5:00 p.m. deadline was reiterated in the ongoing correspondence between the parties' respective solicitors. Furthermore, the appellate court did not find the Vendor's termination of the APS based on the "time of the essence" clause to be unreasonable, unfair or unjust. It was clearly open to the Vendor to be more lenient with the Purchaser in light of their financial predicament on the extended closing date, but the appellate court did not find that the Vendor had acted improperly by insisting on strict compliance with a contractual term to which the parties had agreed, and Justice Sossin simply saw no reason to rewrite the parties' bargain.

Moreover, the appellate court did not accept the characterization of the Vendor's insistence on the Purchaser's payment of $113,000 as a penalty, and did not interfere with the motion court judge's finding that said revival fee was simply a term of a new contract that was freely entered into by the parties, after the termination of the original APS. Finally, the Ontario Court of Appeal rejected the argument that the Purchaser was subjected to economic duress, and upheld the motion court judge's finding that the Purchaser had the ability to refuse the Vendor's offer to revive the APS for the additional $113,000, and also had the benefit of independent legal advice throughout the transaction, and said decision was consequently entitled to deference by the appellate court.

****

LANDPRO CONFERENCE 2026

PRESENTATION

EVERYTHING ABOUT HEATING AND COOLING SYSTEMS

BRAM ATLIN

Principal, Smith and Andersen Consulting Engineering.

09



TOPIC: EVERYTHING ABOUT HEATING AND COOLING SYSTEMS

BRAM ATLIN

Principal, Smith and Andersen Consulting Engineering.

Bram has designed and managed the delivery of numerous projects, taking on increasingly complex roles. His roots with Smith + Andersen run deep - he worked with the firm as a co-op student while completing his undergraduate degree at the University of Waterloo and joined S+A the same year he graduated. Bram leads the multi-unit residential team based out of Toronto, providing innovative solutions on some of the GTA's most impressive high rise developments. Bram has designed and managed a wide variety of projects across the country, including high-rise residential, institutional, commercial office, data centres and community centres, and continues to grow his extensive technical experience.

While he's collaborated on projects across the country, Bram has built up and led the residential team based in Toronto. His leadership in this market sector has elevated our firm's residential portfolio, playing an integral role in our earned reputation as a trusted partner for developers and architects alike. Well-rounded and approachable, Bram truly understands people. He is highly-proficient in the technical details, but he also knows when to be practical.



EVERYTHING ABOUT HEATING AND COOLING SYSTEMS.

(FOR MULTI-UNIT RESIDENTIAL BUILDINGS)

LANDPRO CONFERENCE

Smith + Andersen

A BRIEF LOOK AT SMITH + ANDERSEN

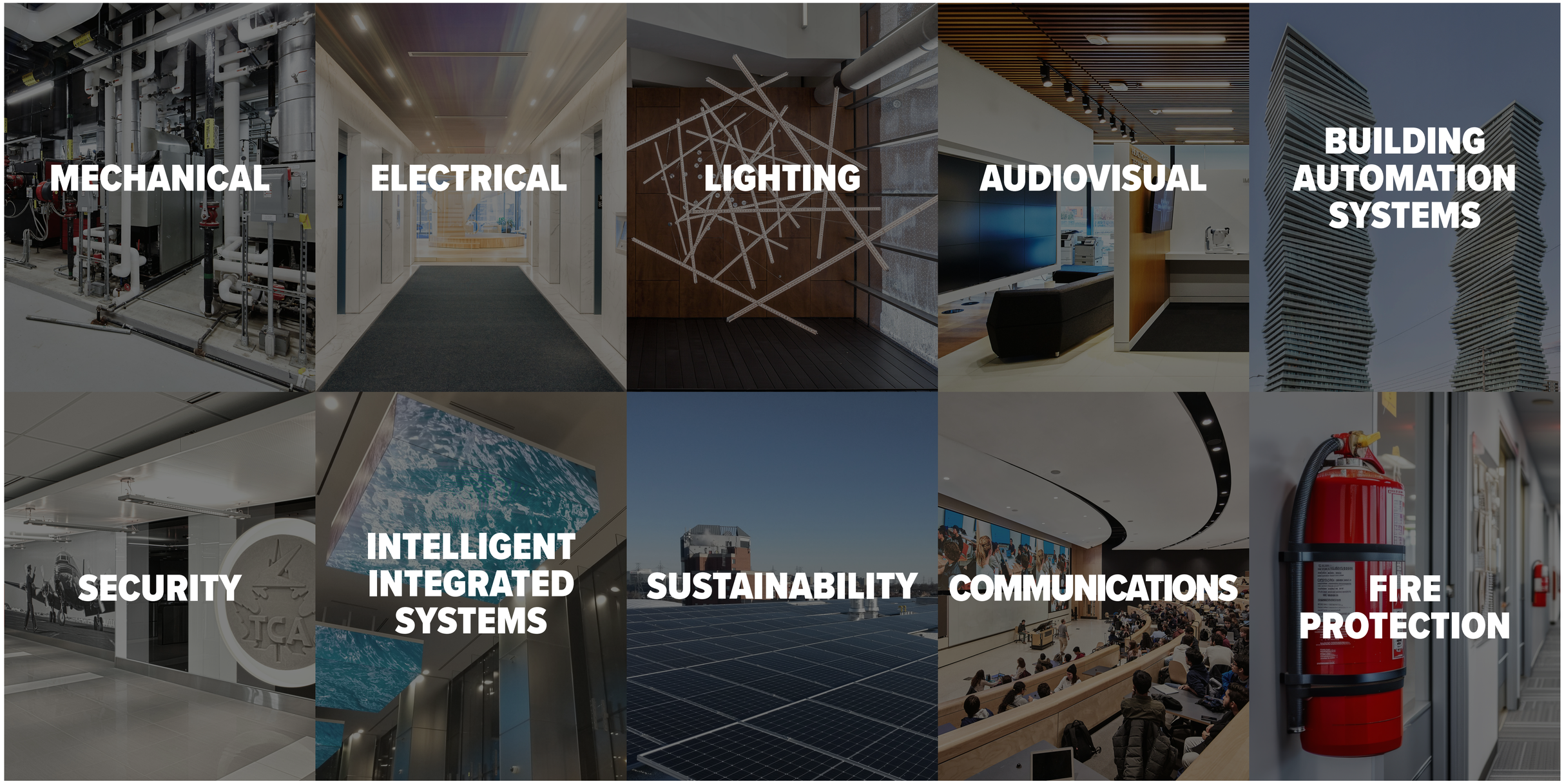
NATIONAL OFFICE RESOURCES:

- A Canadian, privately owned engineering consulting firm
- Diversified in all sectors (ICI) of the built environment
- Recognized as an industry leader
- More than 350 local staff
- In Business for 65 Years
- Organically grown staying true to our core values
- More than 750 staff across Canada
- Dedicated Multi-Unit Residential Buildings Team



Bram Atlin // Principal

Leads the Toronto MURB team while also driving national MURB initiatives.


MECHANICAL
ELECTRICAL
LIGHTING
AUDIOVISUAL
BUILDING AUTOMATION SYSTEMS
SECURITY
INTELLIGENT INTEGRATED SYSTEMS
SUSTAINABILITY
COMMUNICATIONS
FIRE PROTECTION

MAJOR TORONTO MARKET SECTOR

MIXED-USE & RESIDENTIAL



Westwood Gardens
Toronto, ON



Daniels Waterfront (North Towers & South)
Toronto, ON



M City
Mississauga, ON

Image Courtesy of Ruby Photo Studio



Forma Condos
Toronto, ON

Image Courtesy of Great Gulf Group

MAJOR TORONTO MARKET SECTOR

RESIDENTIAL (CONT'D)

55 Charles
Toronto, ON

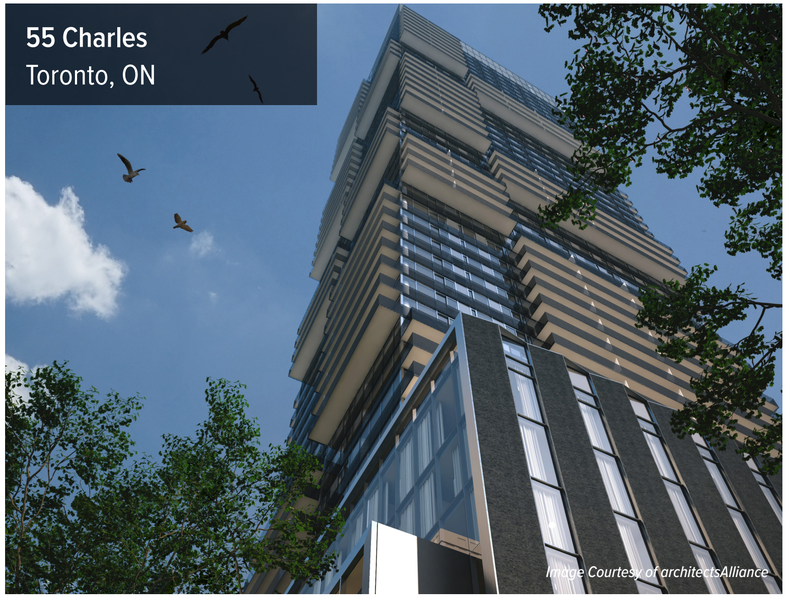


Image Courtesy of architectsAlliance

1071 King Street West
Toronto, ON

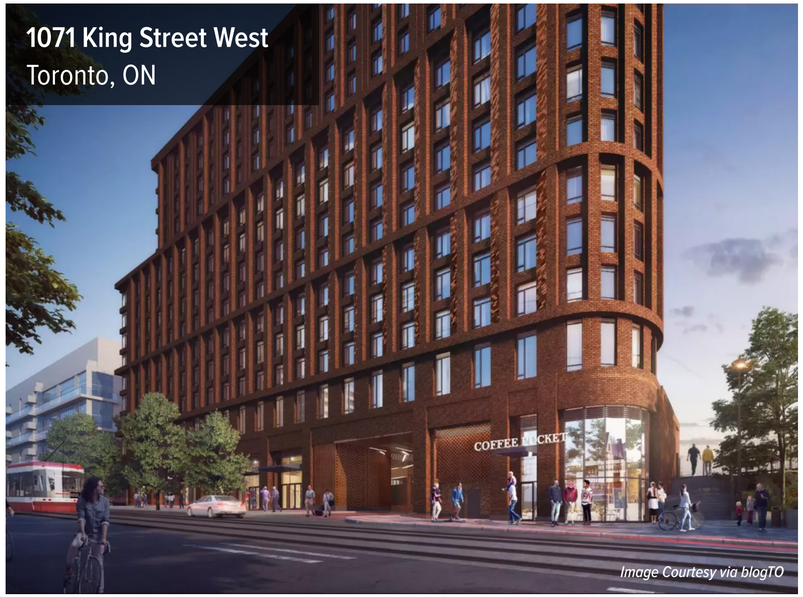


Image Courtesy via blogTO

The United BLDG
Toronto, ON



Image Courtesy of B+H Architects

Lillian Park
Toronto, ON

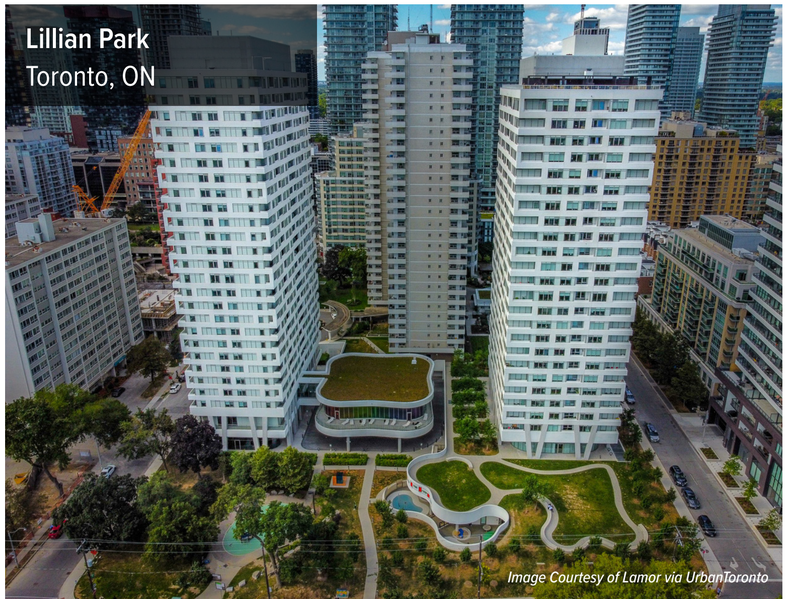


Image Courtesy of Lamor via UrbanToronto

Galleria On The Park
Toronto, ON



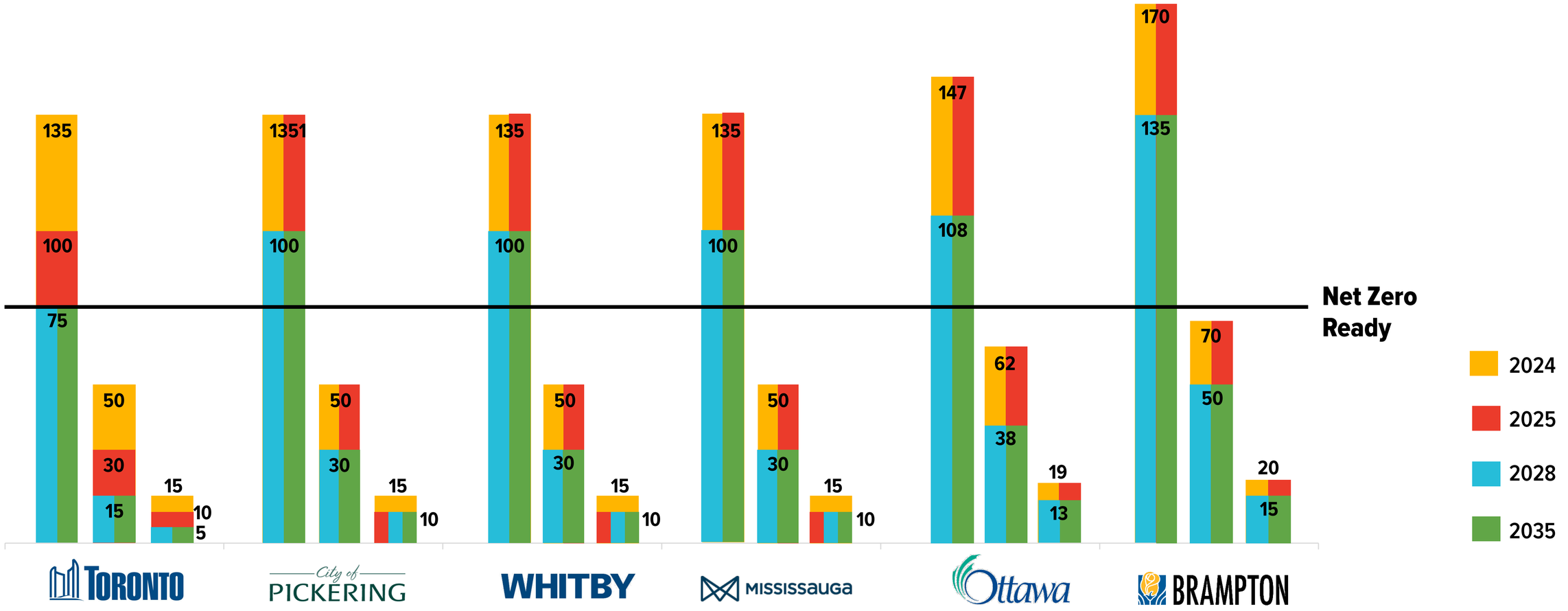
Image Courtesy of CORE Architects and Hariri Pontarini Architects

THE BIGGER PICTURE



THE BIGGER PICTURE

ALIGNMENT OF MUNICIPAL GREEN STANDARDS 2024-2035



THE BIGGER PICTURE

CERTIFICATIONS AND INCENTIVE PROGRAMS

MEP 2040
Committing to Zero

PASSIVEHOUSE CANADA
Build better. Feel better.

CAGBC
Canada Green Building Council | Conseil du Bâtiment Durable du Canada

CMHC SCHL
MLI SELECT

ONE PLANET LIVING

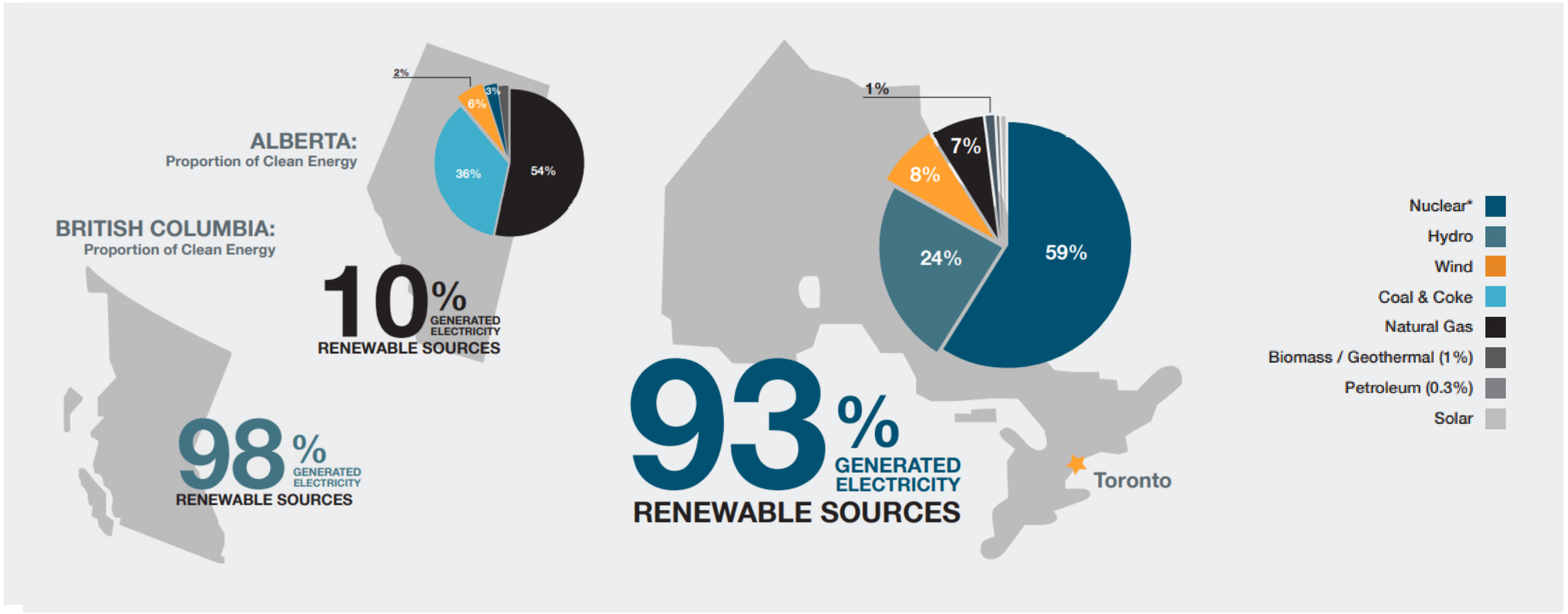
Company specific Environment, Social and Governance (ESG) plans

ZERO CARBON BUILDING STANDARD
Canada Green Building Council®

CMHC SCHL
APARTMENT CONSTRUCTION LOAN PROGRAM

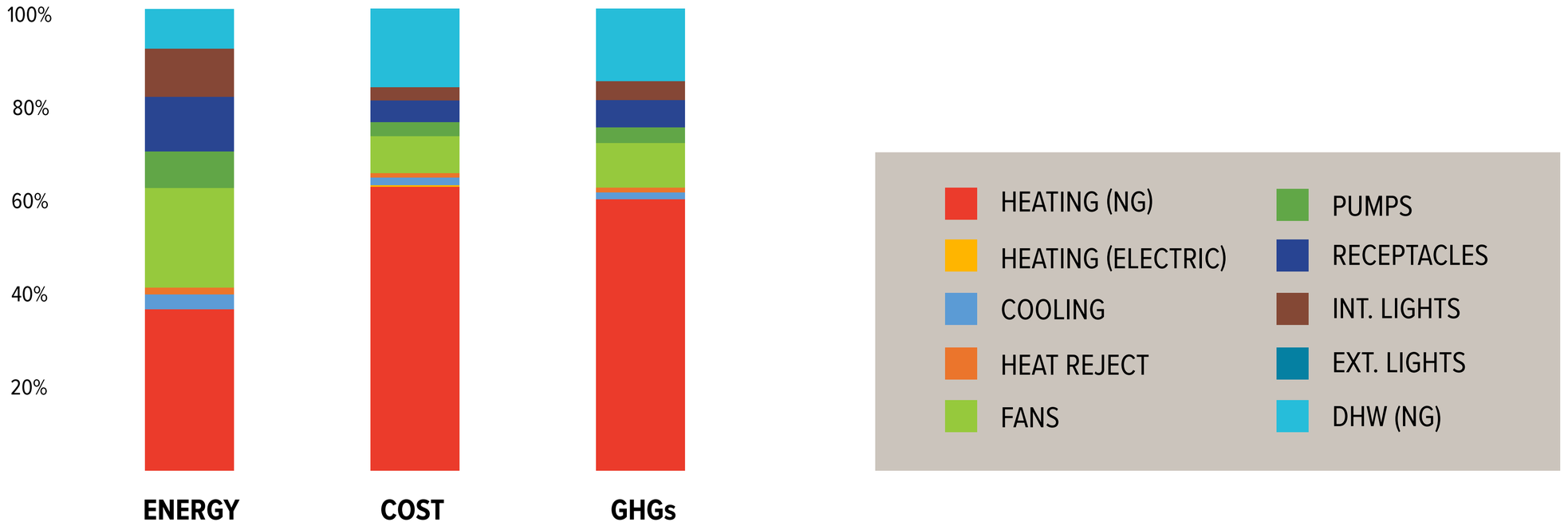
THE BIGGER PICTURE

ELECTRIFY HEATING SYSTEMS



THE BIGGER PICTURE

ENERGY, COST AND GHG PERFORMANCE



*Indicative of a typical multi-unit residential building that would be TGS Tier 1 V4 compliant.

HVAC

(HEATING, Ventilation, AIR CONDITIONING)

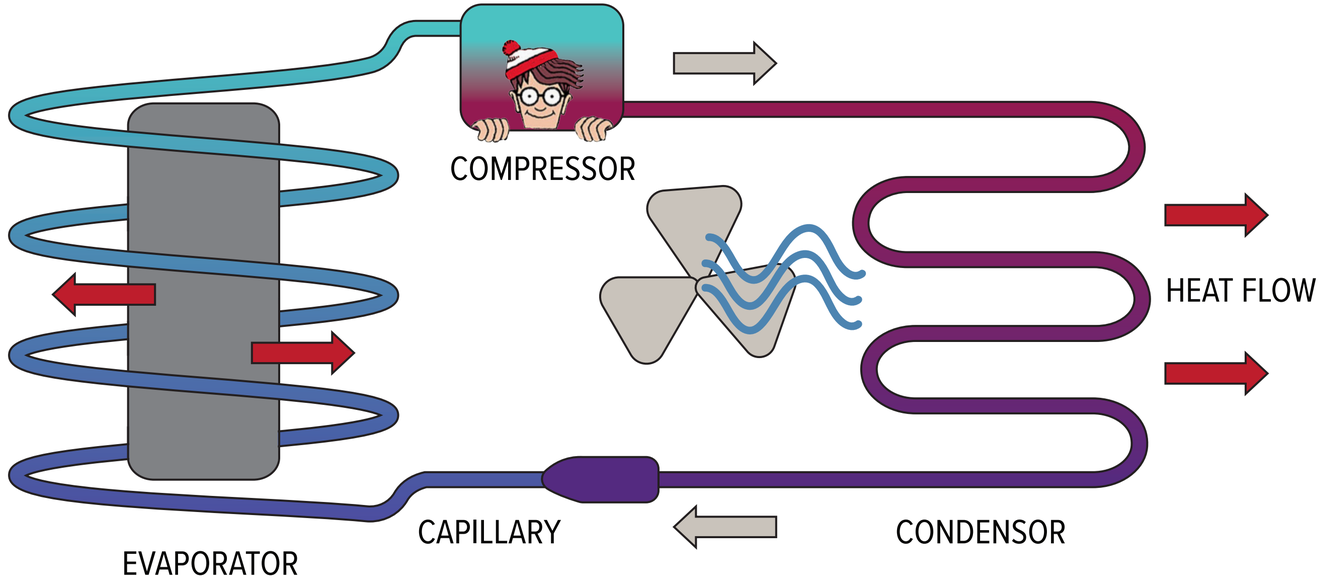


HVAC

HEATING SYSTEMS

- Fossil fuel options
  - Boilers
  - Gas-fried appliances
- Electric options
  - Electric boilers
  - Heat pumps

COOLING SYSTEMS



REFRIGERATION CYCLE

HVAC

COMMON TECHNOLOGIES

DECENTRALIZED SYSTEMS (LIMITED HVAC EQUIPMENT IN PENTHOUSE)



Air-to-Air Heat Pumps



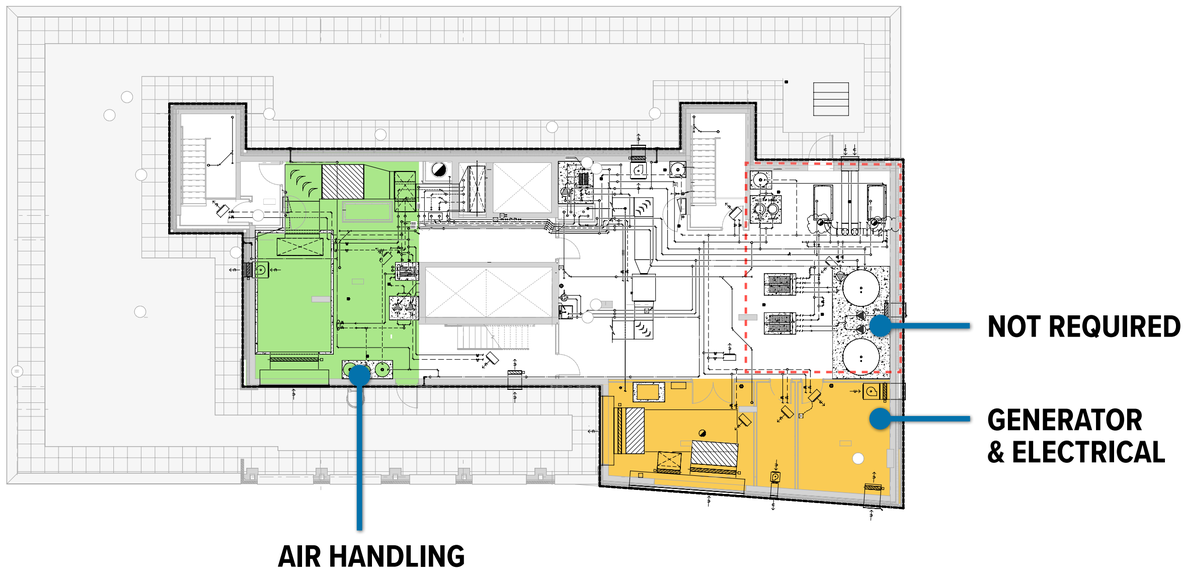
Furnace/Air Handling Unit



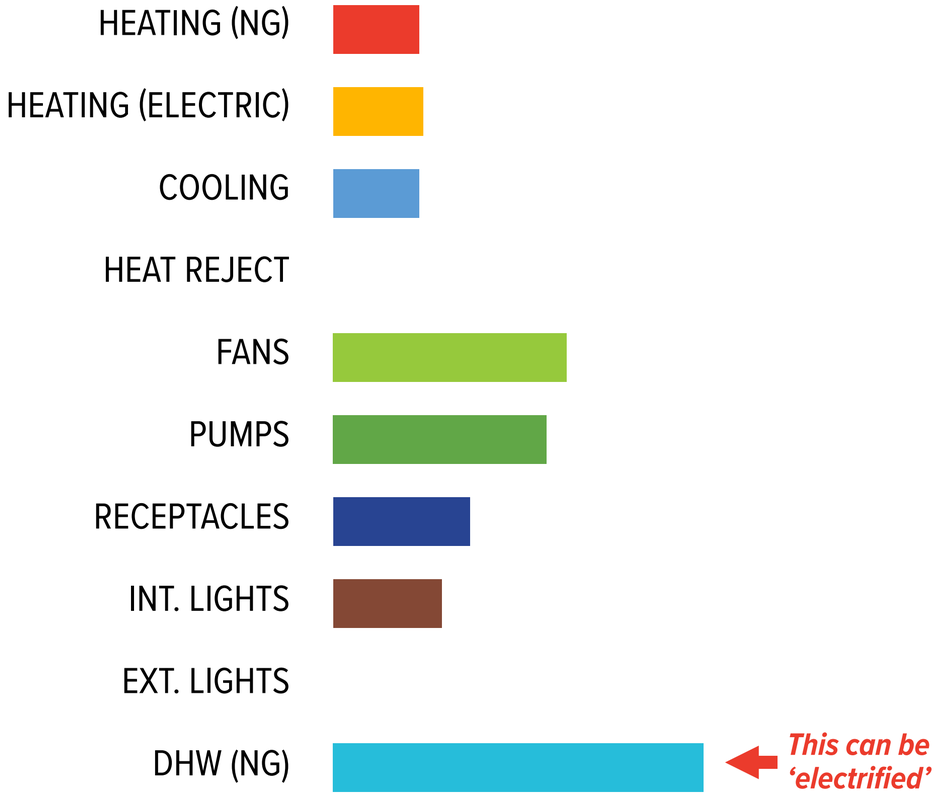
Split systems (Air Source Heat Pumps)

HVAC

DECENTRALIZED SYSTEMS



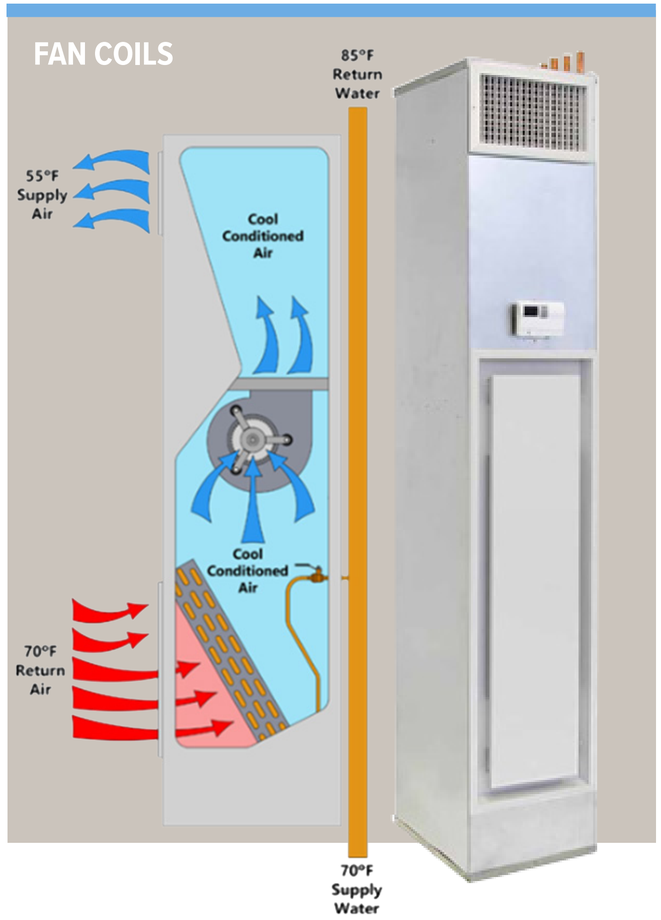
GHG by End-Use



*Indicative of a typical multi-unit residential building that would be TGS Tier 1 V4 compliant.

HVAC — CENTRALIZED SYSTEMS

FAN COILS VS. HEAT PUMPS



DETERMINING FACTORS

Marketing and Client's Past Experiences

Budget / Number of Suites / Contractor Preference Acoustics

Efficiency and Maintenance

Utility Usage and Metering

Centralized or De-centralized

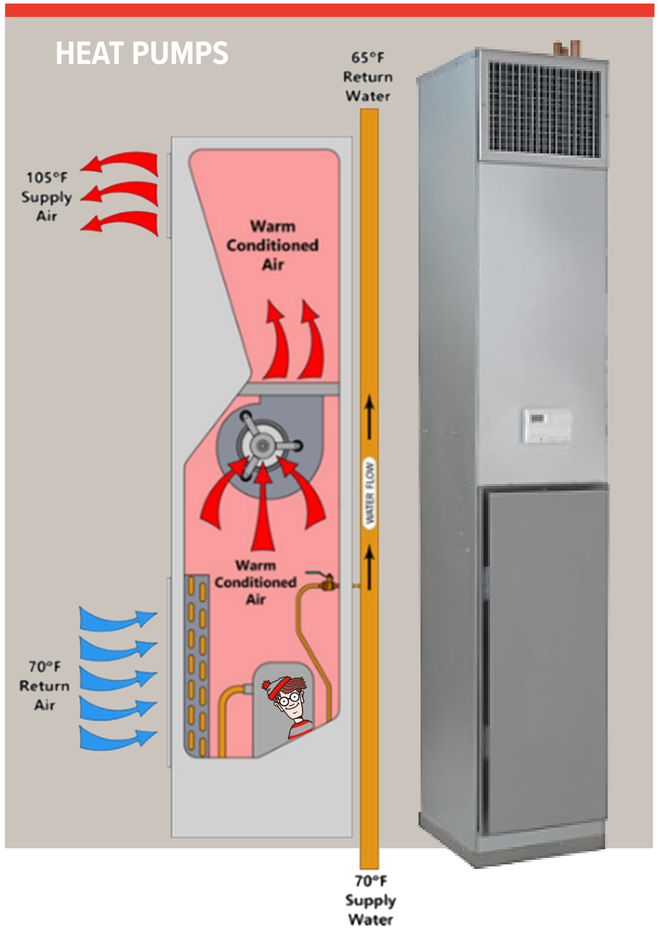
Systems Space Throughout Building

NEW AND DOMINANT FACTORS IN DETERMINING SYSTEM TYPE

Utility Type

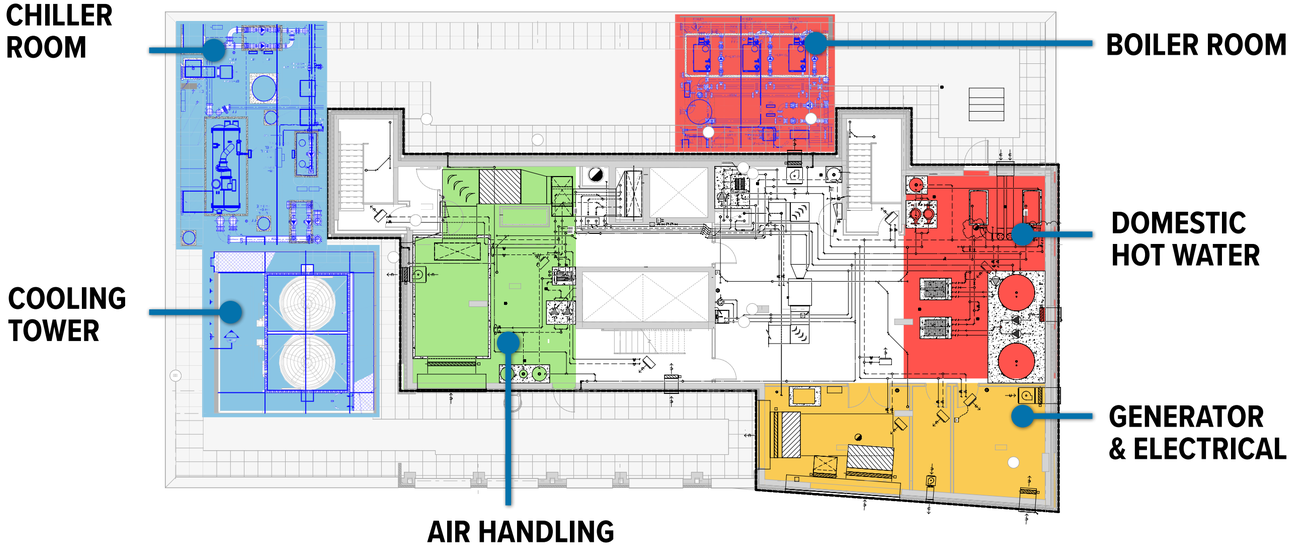
Fuel Switching

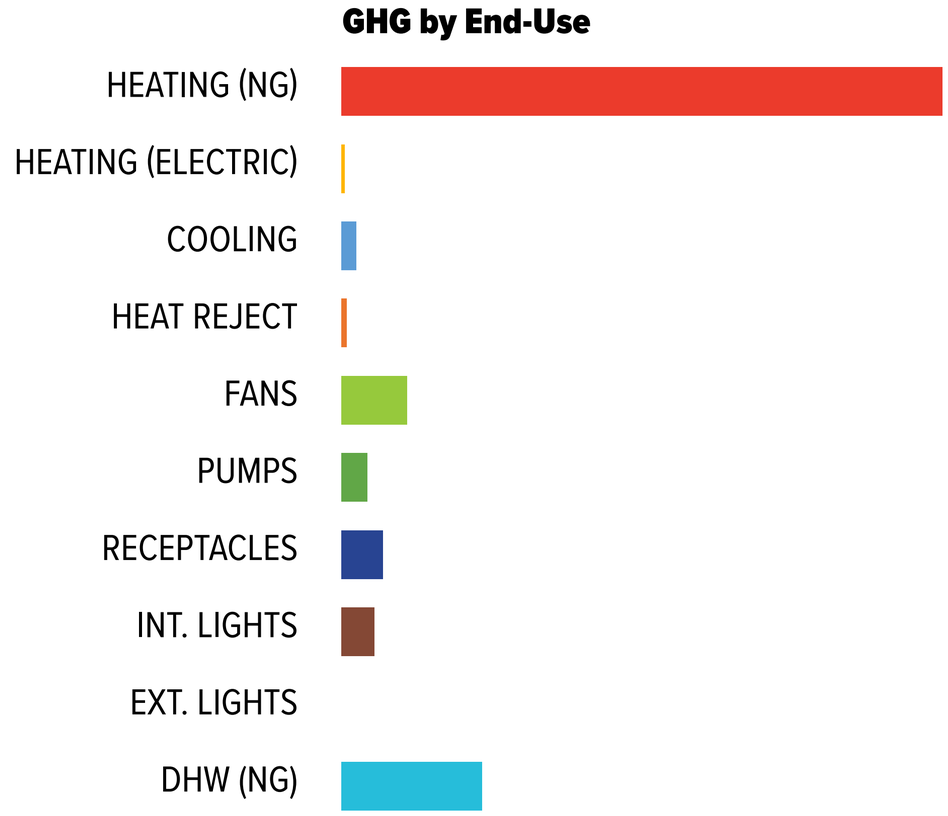
Resiliency



HVAC — CENTRALIZED SYSTEMS

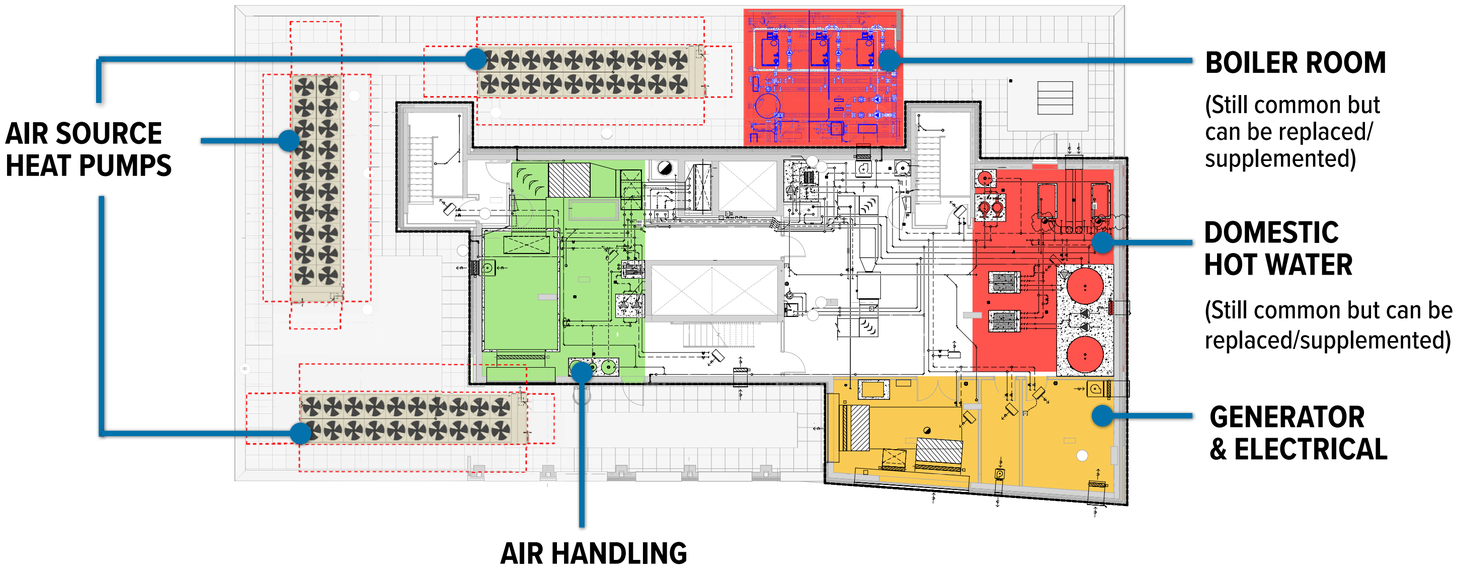
OLD APPROACH:
MECHANICAL PENTHOUSE





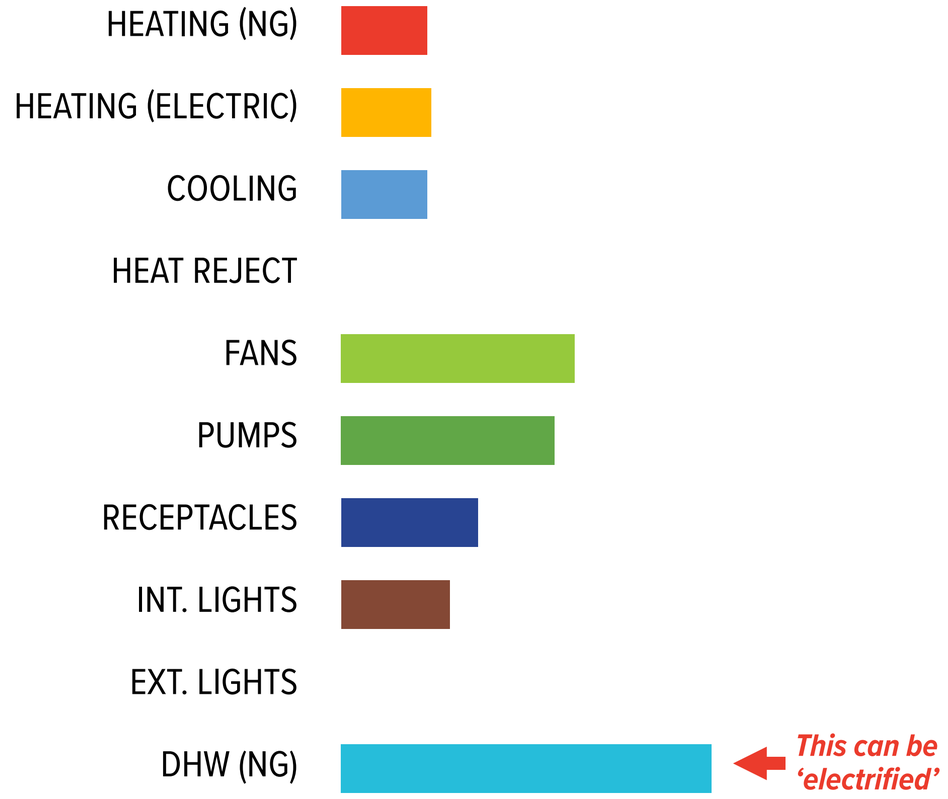
HVAC — CENTRALIZED SYSTEMS

AIR SOURCE HEAT PUMPS



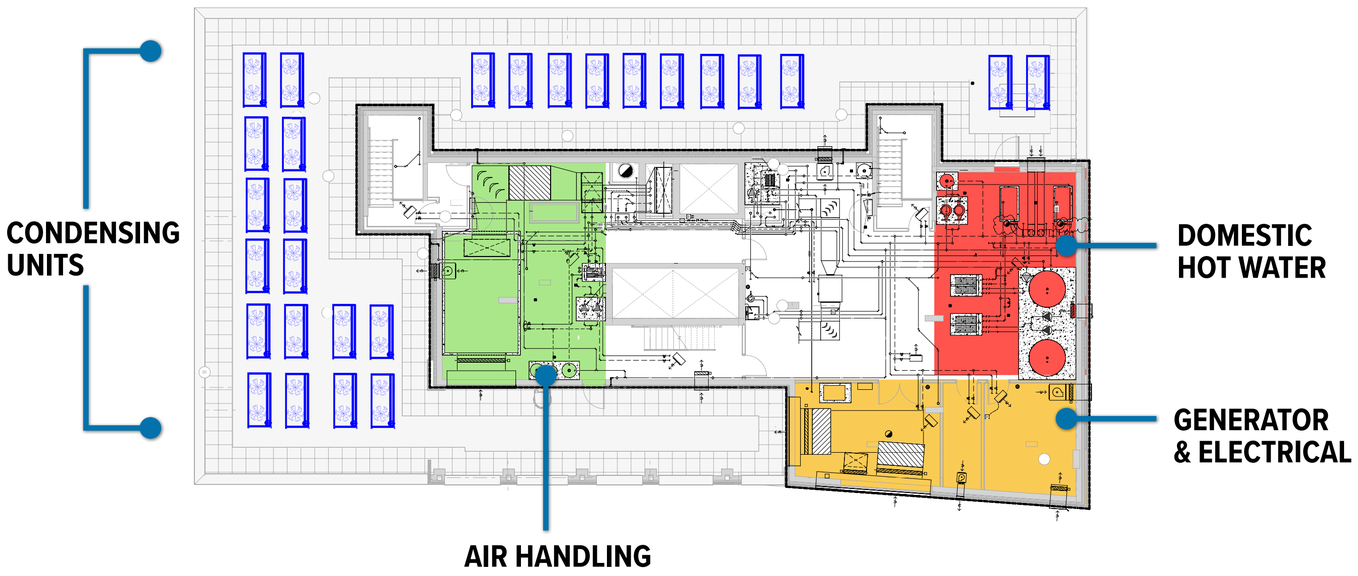
*Indicative of a typical multi-unit residential building that would be TGS Tier 1 V4 compliant.

GHG by End-Use



HVAC — CENTRALIZED SYSTEMS

VRF AIR COOLED



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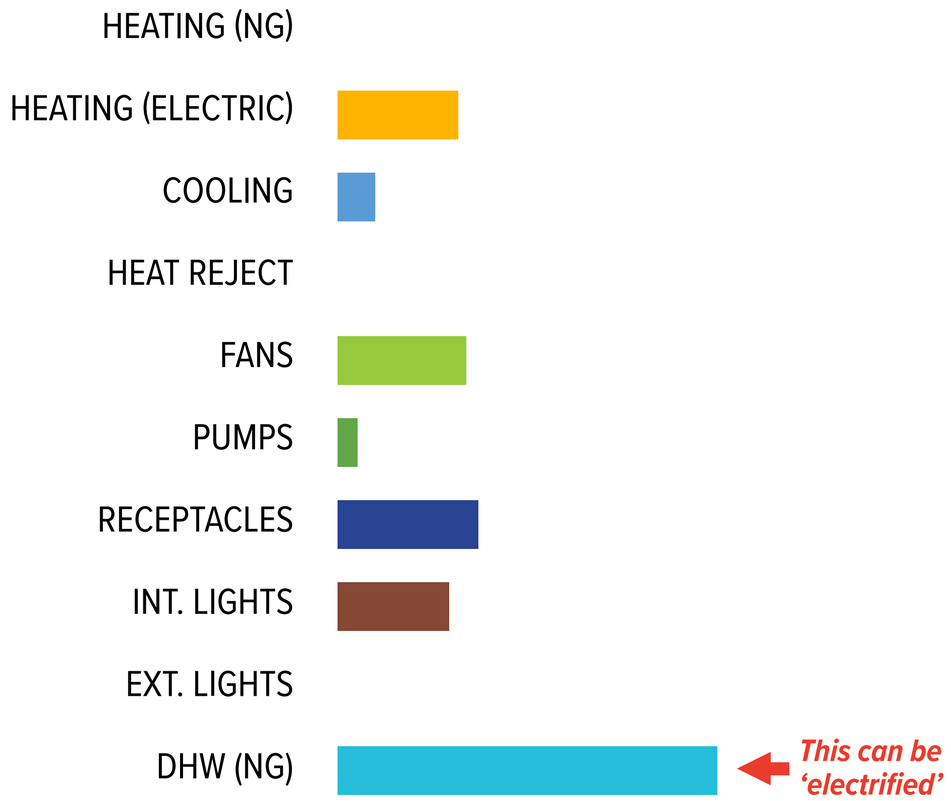
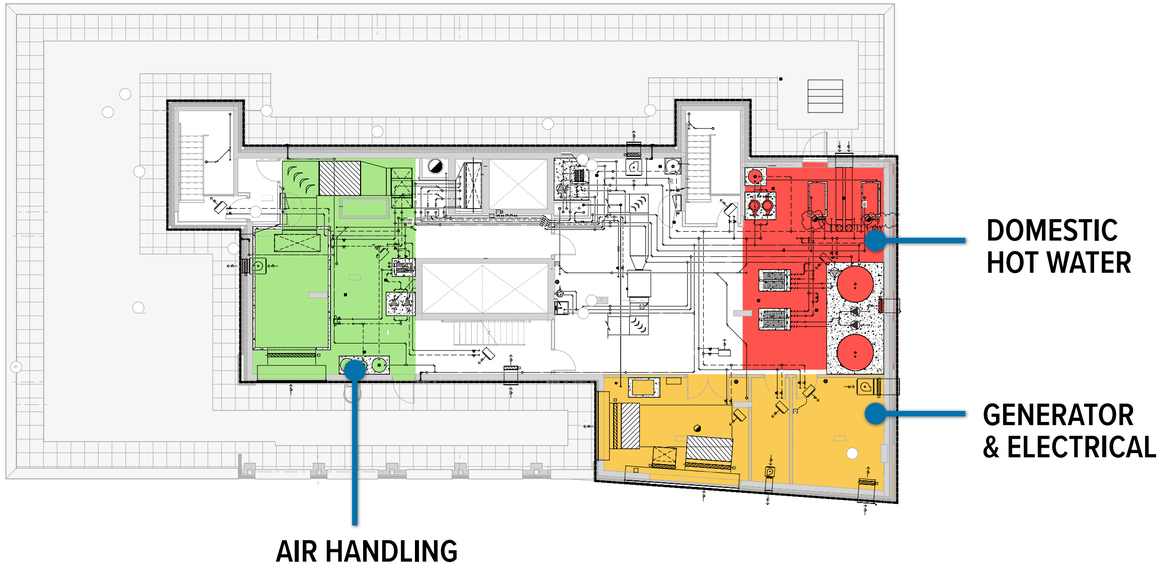
GHG by End-Use



HVAC — CENTRALIZED SYSTEMS

GEOTHERMAL



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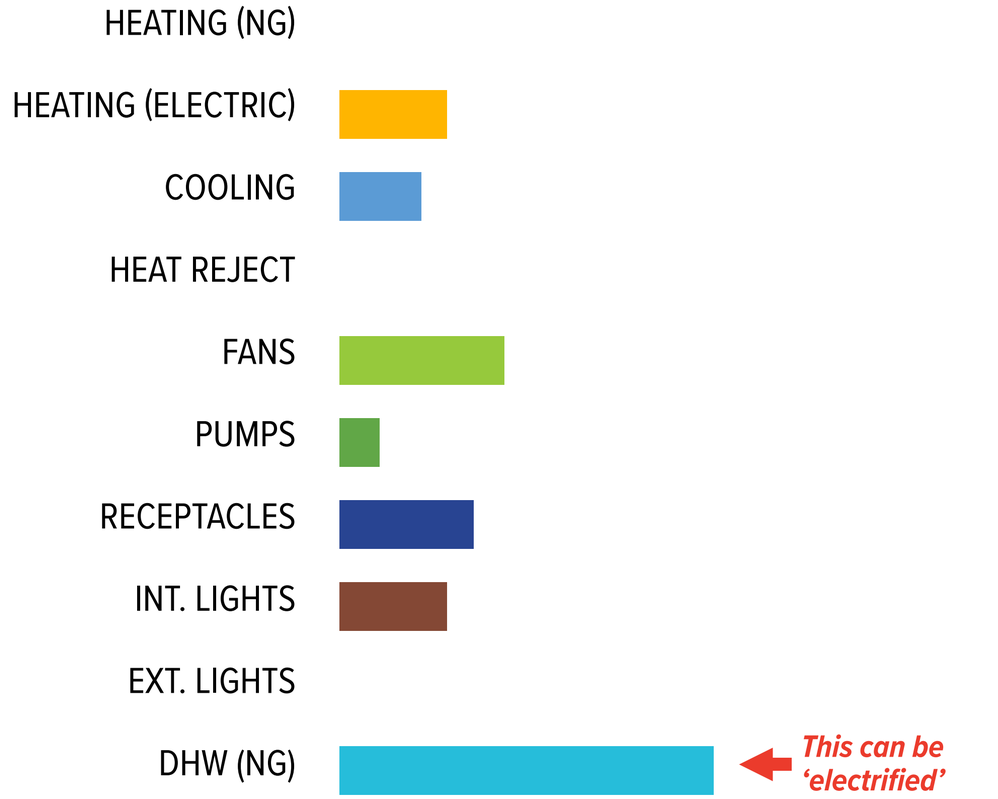
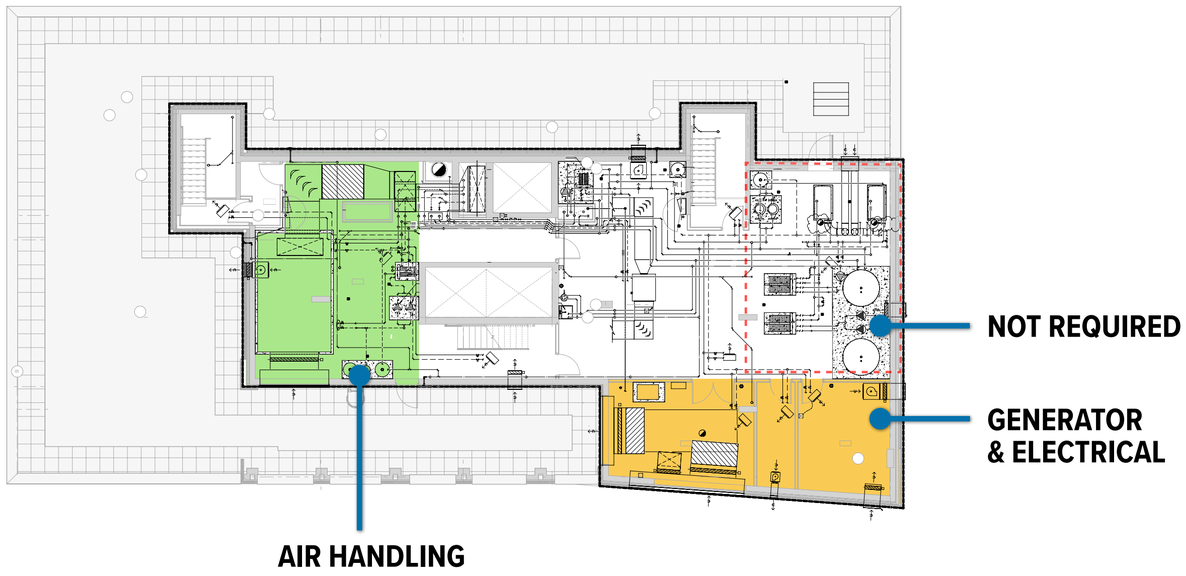
GHG by End-Use



HVAC — CENTRALIZED SYSTEMS

DISTRICT ENERGY



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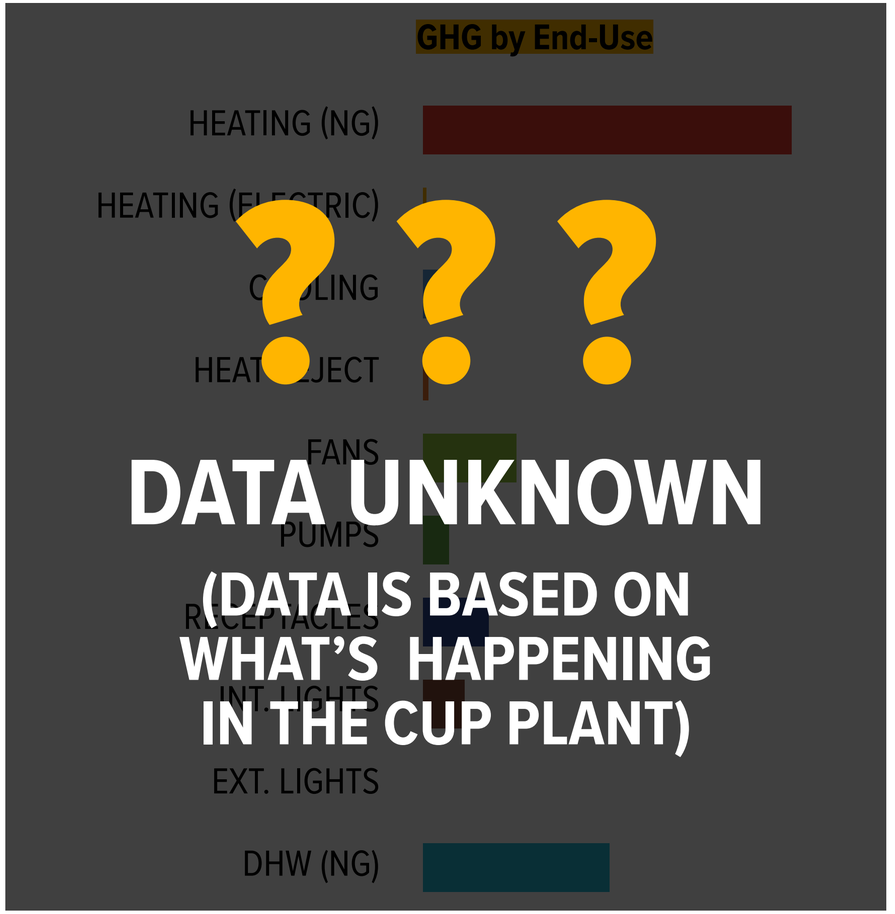


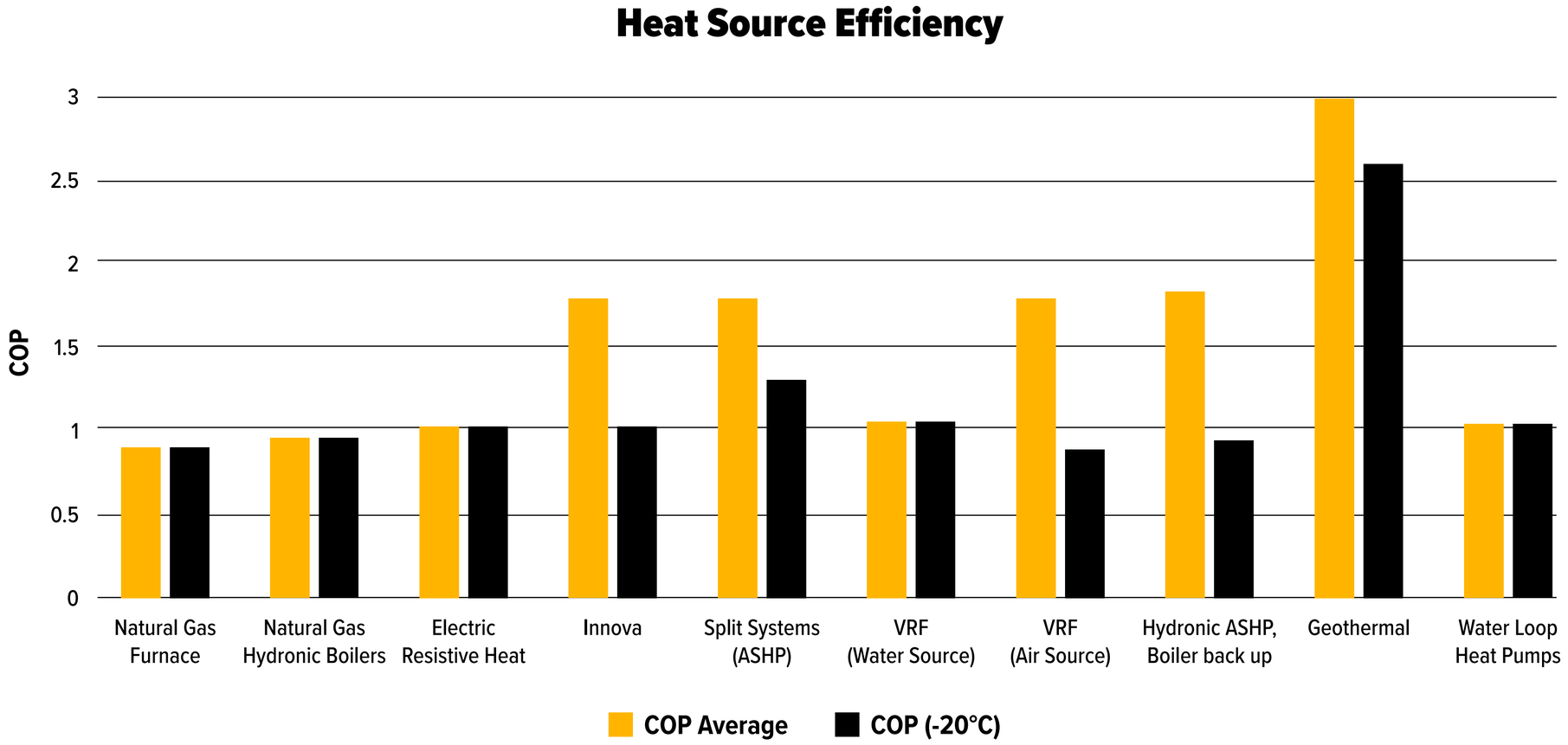
OTHER CONSIDERATIONS AND SUMMARY



Image Courtesy of Christophe Benard Photography

MECHANICAL SYSTEMS

- Performance varies dramatically with outside air temp
- Varies with manufacturers
- Back up systems



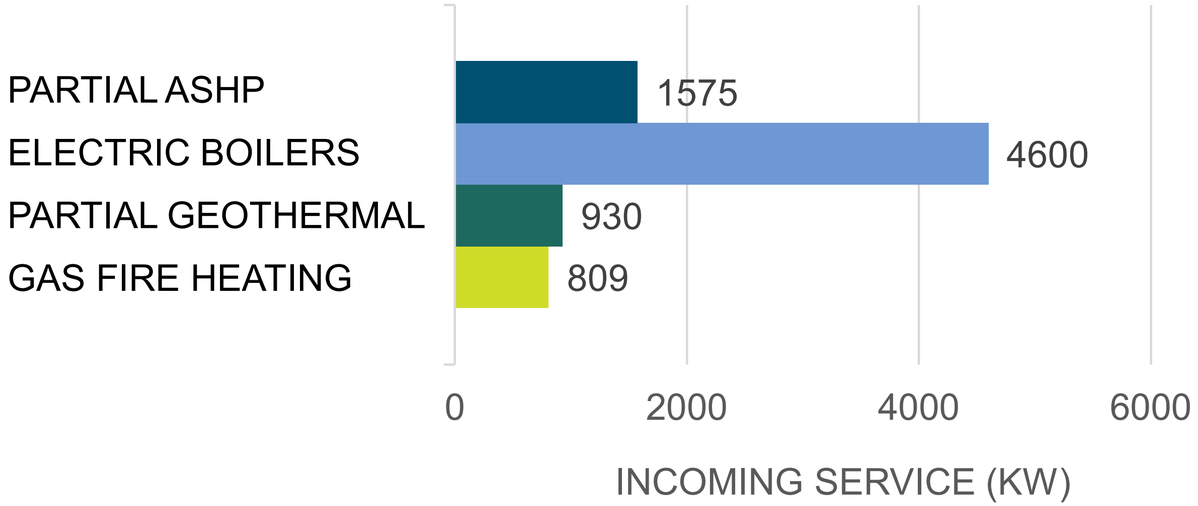
ELECTRICAL SYSTEMS

For Building design and renovation, make the building “heat pump” ready:

- **Plan for the Electrical Service** (service size, diversity, load shedding, understanding operation)
- **Lower Supply Temperatures** (heat with the ‘coldest’ water possible)
- **Energy Storage** (address peak loads and peak temperature spikes, back-up power)
- **Consider Hybrid Systems** (leave existing ‘peaking plants’ and focus on practical solutions)

CASE STUDY

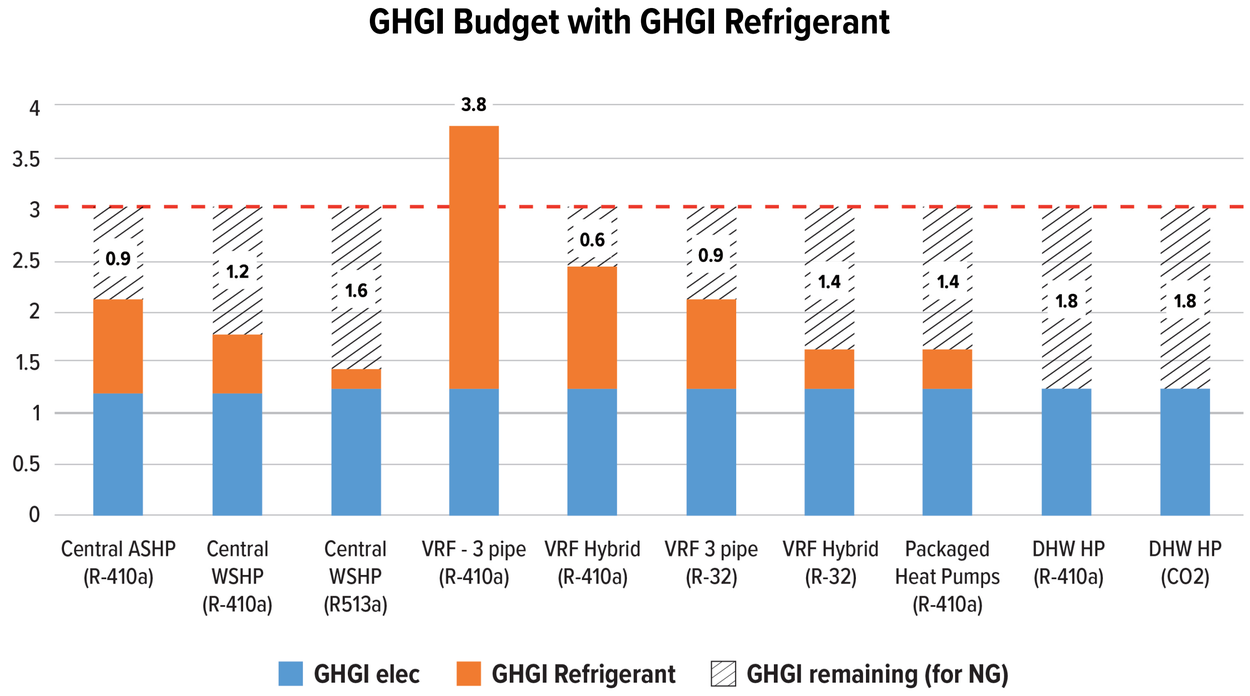
INCOMING POWER BY SYSTEM TYPE



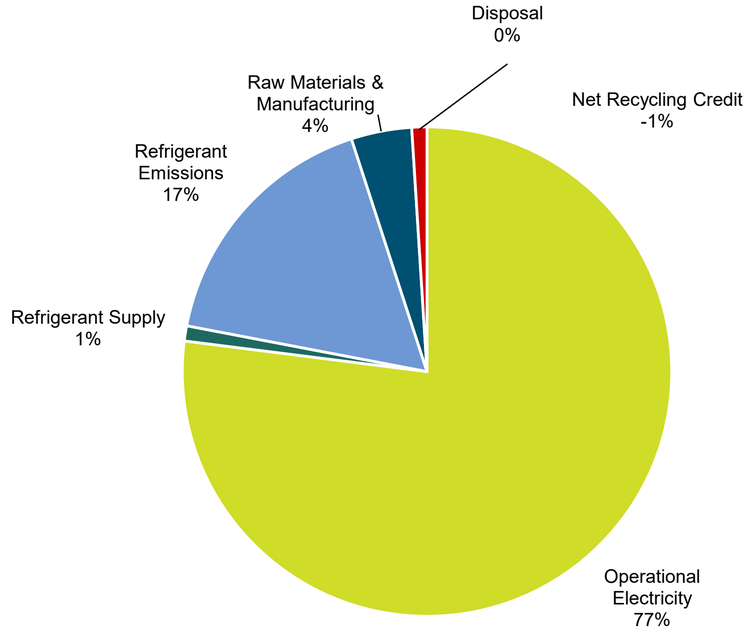
https://www.wrightrenewableheating.co.uk/how-heat-pumps-work/

OTHER CONSIDERATIONS AND SUMMARY

REFRIGERANTS AND M+E EMBODIED CARBON



Refrigerants Included in GHGI Limits



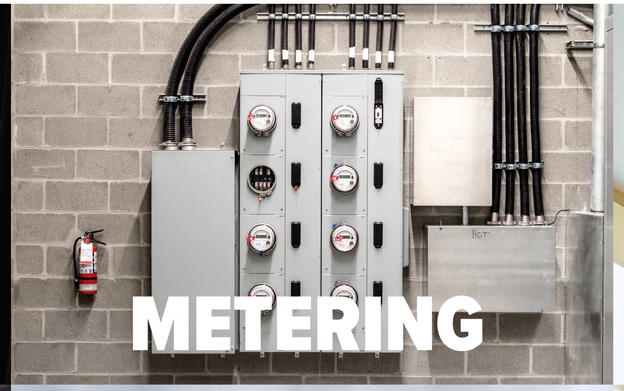
Chiller Lifecycle Global Warming Potential (25 Year Service Life)

OTHER CONSIDERATIONS AND SUMMARY

COMFORT & RESILIENCY

















THANK YOU



LANDPRO CONFERENCE

Smith + Andersen

PRESENTATION

UPDATE ON OLT TRENDS AND NEW PROVINCIAL LEGISLATION TO PROMOTE TRANSIT DEVELOPMENT

MICHAEL KRALJEVIC, RPP
Chair, Ontario Land Tribunal.

10

PRESENTATION



TOPIC: UPDATE ON OLT TRENDS AND NEW PROVINCIAL LEGISLATION TO PROMOTE TRANSIT DEVELOPMENT

MICHAEL KRALJEVIC, RPP

Chair, Ontario Land Tribunal.

Michael Kraljevic was appointed Full-Time Chair of the Ontario Land Tribunal on February 11, 2023, where he served as Interim Chair as of August 11, 2022.

Michael Kraljevic, MCIP. RPP. PLE., is a Real Estate and Land Development professional who has worked with both private and public sector companies for over 30 years. He has held key positions with the Federal Government, at Canada Mortgage and Housing Corporation (CMHC), the Canada Lands Company and the Parc Downsview Park (PDP).

Mr. Kraljevic led the Toronto Port Lands Company as the President and CEO from 2009 to 2018 and was Executive Advisor at CREATETO to 2019.

Mr. Kraljevic was a Vice-President of Real Estate with City of Toronto Economic Development Corporation from August 2005 to 2009, overseeing the development, acquisition, leasing, joint venture partnership and property management of all land and buildings owned by the Corporation.

Mr. Kraljevic is a Registered City Professional Planner (RPP), a Member of the Canadian Institute of Planners and the Ontario Professional Planners Institute, a Professional Land Economist (PLE), and a Member of the Ontario Society of Environmental Management (OSEM).

Mr. Kraljevic is a graduate of Ryerson University (now Toronto Metropolitan University) in Urban Regional Planning, holds a Certificate in Environmental Management, and is an Alumni, Harvard University Graduate School of Design (GSD), Advanced Management Program (AMDP) in Real Estate 2013, and Lecturer on Development Matters and Transit Oriented Communities at Harvard GSD.

Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire
Ontario

Ontario Land Tribunal

Presentation to the LandPro Conference 2026

Presented by:
Michael Kraljevic, OLT Chair
April 1, 2026

This presentation is confidential, privileged, and not for distribution. It supersedes all previous versions on this topic.

Today's Agenda

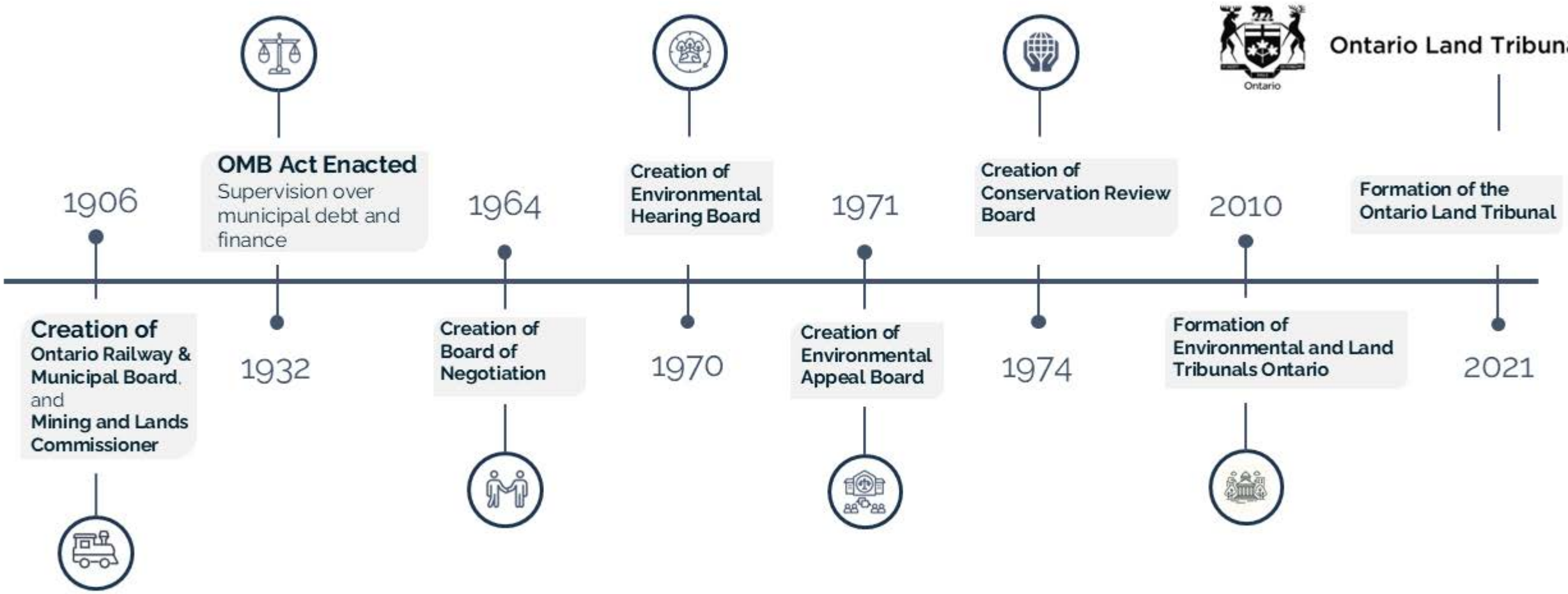
- OLT Role
- OLT Caseload
- OLT End to End Process
- Mediation
- Recent Developments
- Major Transit Station Areas and Inclusive Zoning
  - City of Toronto Key Map
- Transit Oriented Communities Program

The Ontario Land Tribunal (OLT)

- The OLT is an independent, administrative tribunal, first created in 1906 as the Ontario Railway and Municipal Board & Mining and Lands Commissioner, that adjudicates matters related to land use planning, environmental and natural features, heritage protection, land valuation and compensation, municipal finance, and related matters.

- On June 1, 2021, the government under the authority of **section 2** of the ***Ontario Land Tribunal Act, 2021,*** amalgamated five predecessor tribunals:
  - Local Planning Appeal Tribunal (LPAT)
  - Environmental Review Tribunal (ERT)
  - Board of Negotiation (BON)
  - Conservation Review Board (CRB)
  - Mining and Lands Tribunal (MLT)

OLT History

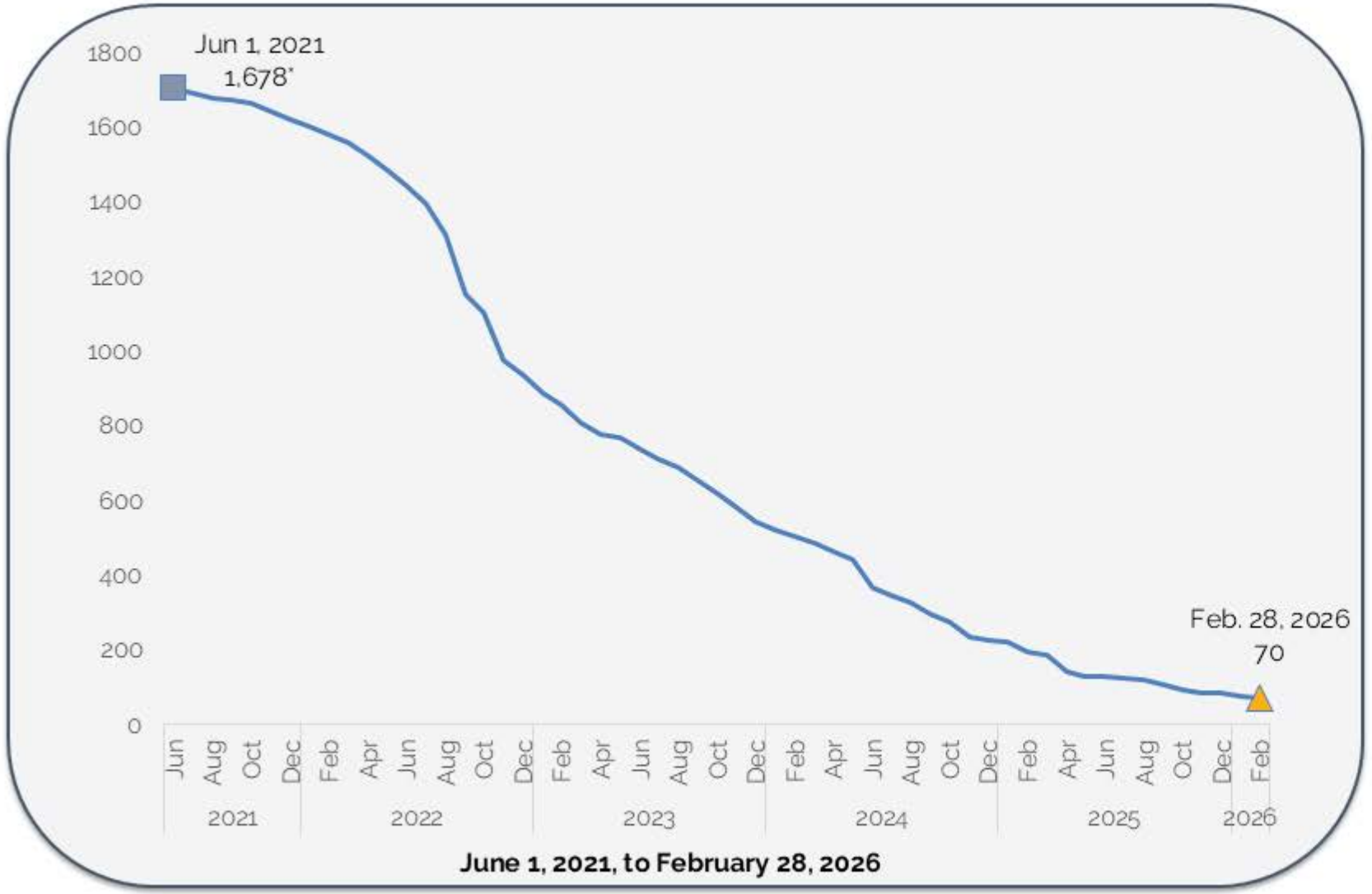

1906
Creation of Ontario Railway & Municipal Board, and Mining and Lands Commissioner
1932
OMB Act Enacted
Supervision over municipal debt and finance
1964
Creation of Board of Negotiation
1970
Creation of Environmental Hearing Board
1971
Creation of Environmental Appeal Board
1974
Creation of Conservation Review Board
2010
Formation of Environmental and Land Tribunals Ontario
2021
Formation of the Ontario Land Tribunal
Ontario Land Tribunal

Order in Council Members



Since 2023, the Tribunal has increased its OIC Membership to 50 members (full time and part time), more than doubling the number of qualified individuals able to adjudicate on the various issues under its jurisdiction.

Legacy Cases

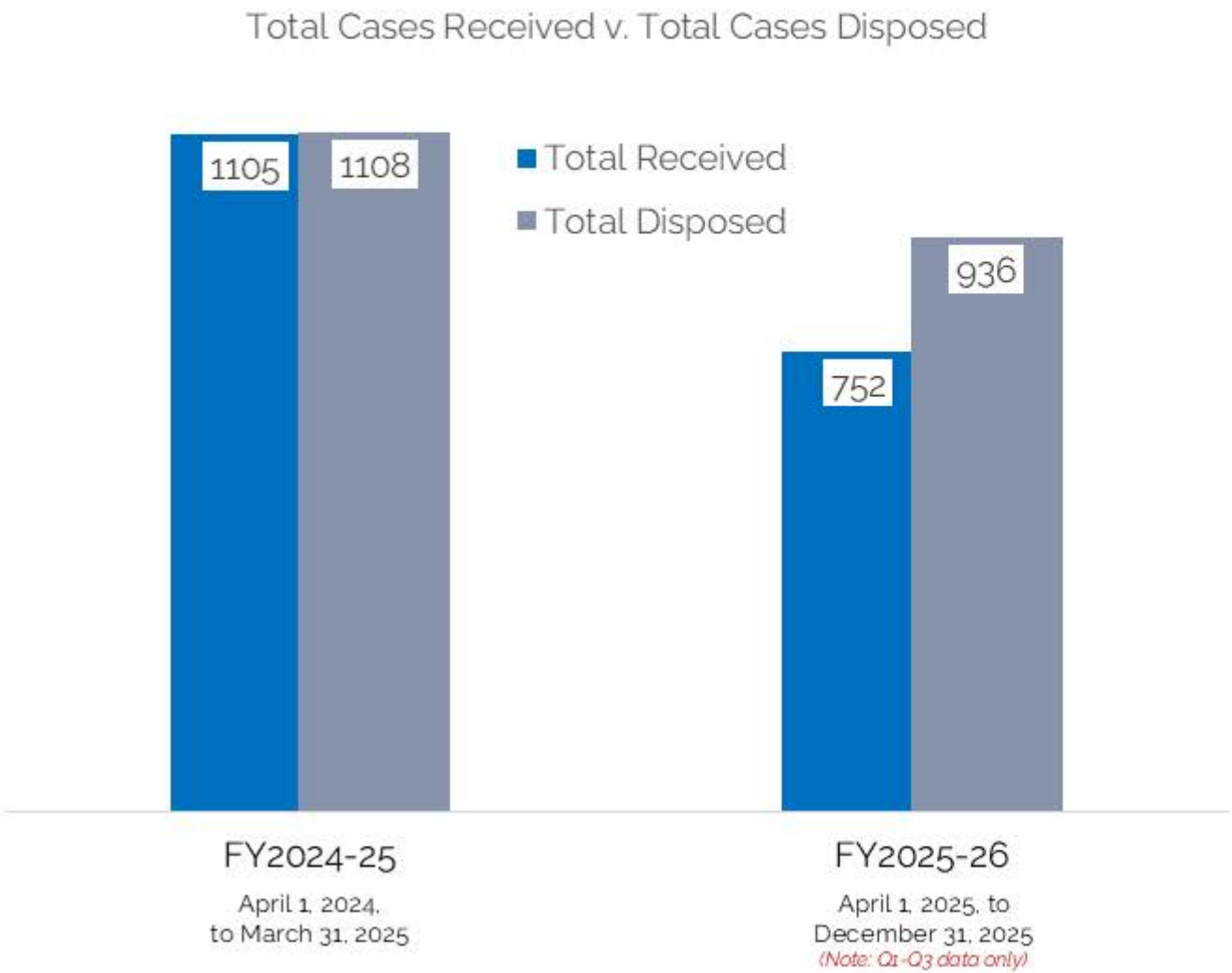


June 1, 2021, to February 28, 2026

- Legacy cases are those that were filed with the predecessor tribunals, including the former Ontario Municipal Board (OMB), prior to the establishment of the OLT.
- Open Legacy Cases Involve:
  - Official Plan/Amendment (50.4%)
  - Zoning By-law/Amendment (16.5%)
  - Expropriation/Land Compensation (13.2%)

*includes Lead/Child/Standalone Cases

Caseload Overview



From April 1, 2024, to December 31, 2025 (20 month period)

- Over 1,800 cases received
- Over 2,000 cases disposed

Disposed cases involved approximately 188,000 residential units

- Case types are filed under 60+ statues and regulations including:
  - *Aggregates Act*
  - *Conservation Authorities Act*
  - *Expropriations Act*
  - *Municipal Act*
  - *Ontario Water Resources Act*
  - *Planning Act*

During this period, planning cases received consisted of:

- Zoning By-laws (26%)
- Official Plans (19%)
- Plan of Sub-division appeals (6%)

Timeline for Official Plan Amendments

Pre-Consultation

- Applicant and Staff consult on proposal
- Staff provides general directions and prepares list of required documents

Application Submission

- Applicant and Staff consult on proposal
- Staff provides general directions and prepares list of required documents
- **Legislation allows appeal to the OLT under limited circumstances**

Public Meeting

- Notice of application is issued
- Mandatory Public Meeting held with public allowed to make comments
- Comments from other agencies (i.e. City Departments, Provincial Agencies) provided as necessary

Analysis & Revision

- Staff reviews comments and prepares recommendation
- Applicant may also revise proposal based upon comments if necessary

Approval

- Council will review proposal and staff recommendation and determine approval
- If no decision is made within **120 days**, applicant may appeal lack of decision
- **Decision of council can be appealed to the OLT by statutory party**

End to End Process

Intake

- Approval Authorities make a decision that can be appealed

OR

- Applicants file an appeal after a deadline to render a decision has passed

OR

- Legislation allows OLT to determine requests/appeals/ referrals/etc.

Streaming

- OLT determines most efficient route to dispose of matters.
- Case Management Conferences may be used to organize parties and issues.
- Mediation is an option and remains available throughout a case's lifecycle.

Scheduling

- OLT works with parties to schedule **events** in a timely manner.
- Chair determines assignment of OICs.
- Dedicated Scheduling Unit supports Chair in scheduling events.

Event(s) Held/ Decision Issuance

- Most Decisions **issued within 60 days** after an event.
- Some decisions may result in further events being scheduled.
- Members are supported in their decision writing by a dedicated Decisions Unit.

Closure

- Matters are closed once their final order is issued.
- Cases with no recent party action may be marked as inactive and **Administratively Closed**, removing them from the Tribunal's active caseload. Parties can request cases be re-opened at any time.

Mediation at the OLT

OLT-led mediation is voluntary and confidential, and may aid in optimizing the resolution of complex, contentious and sensitive matters, offering expedited assistance to settle or reduce issues between parties at no extra cost.

Mediation at the OLT is separate and independent from the adjudicative process.

Mediation for Environmental, Mining, Planning and Heritage Matters:

- Available only to Parties involved in a case that is currently open before the OLT
- Mediation conducted by external mediators:

Wendy Nott
Bob Dragicevic
Laurie McPherson
Lindsay Dale-Harris
Mark Bale
Paul Henry
Chris Tzekas
Jeff Cowan
Catherine Lyons
Ron Kanter
Jeannette Gillezeau

Mediation for Expropriation Matters:

- A Party can request Expropriation Mediation before and/or after the service of a *Notice of Application* & *Statements of Claim*
- Mediations conducted by OIC Mediators:

Robert Steinberg
Carrie Hardy
Warren Morris
Debra Arnold
Jennifer Gold
Dan Best
Shannon Braun
Aaron Sauve
Steven Cooke
Bita Rajaee
William Middleton

OLT Rule Update and new AI Practice Directive

OLT Rules of Practice and Procedure were updated on February 17, 2026

- Revisions to Rule 18 promote mediation and encourage early resolution of disputes
- Revisions to Rules 25.6, 25.7, and 25.8 expand the Chair's powers for Requests for Review

OLT Practice Direction on the use of AI in Tribunal Proceedings was announced on January 29, 2026, and takes effect March 30, 2026. The Practice Direction:

- Affirms that Tribunal Members do not use AI to analyze evidence or make decisions and that adjudication remains a fully human responsibility.
- Requires parties, participants and members of the public to attest if AI was used to generate materials provided to the OLT.
- Ensures transparency and allows parties and the Tribunal to appropriately scrutinize the accuracy of materials

Recent Legislative Changes

The following is a list of major housing and planning Provincial Bills and Legislative amendments since 2022
(*bills that include Transit Oriented Design measures)

1. **Bill 60** – *Fighting Delays, Building Faster Act, 2025*
2. **Bill 17** – *Protect Ontario by Building Faster and Smarter Act, 2025**
3. **Bill 5** – *Protect Ontario by Unleashing Housing Act, 2025*
4. **Provincial Policy Statement 2025** (Update to the Provincial Policy Statement)*
5. **Bill 185** – *Cutting Red Tape to Build More Housing Act, 2024**
6. **Bill 162** – *Get it Done Act, 2024*
7. **Bill 150** – *Planning Statue Law Amendment Act, 2023*
8. **Bill 134** – *Affordable Homes and Good Jobs Act, 2023*
9. **Bill 97** – *Helping Home Buyers, Protecting Tenants Act, 2023**
10. **Bill 109** – *More Homes for Everyone Act, 2022*
11. **Bill 23** – *More Homes Built Faster Act, 2022**

City of Toronto
Major Transit Station Areas and Inclusionary Zoning

On August 15, 2025, the Province of Ontario approved, with amendments, 110 of the 132 Major Transit Station Areas and Protected Major Transit Station Areas originally adopted by Toronto City Council in 2022.

Major Transit Station Areas

- Generally defined as the area within an approximate 500 to 800-metre radius of a transit station that will be a focus of minimum density targets of residents and jobs combined per hectare

Protected Major Transit Station Areas

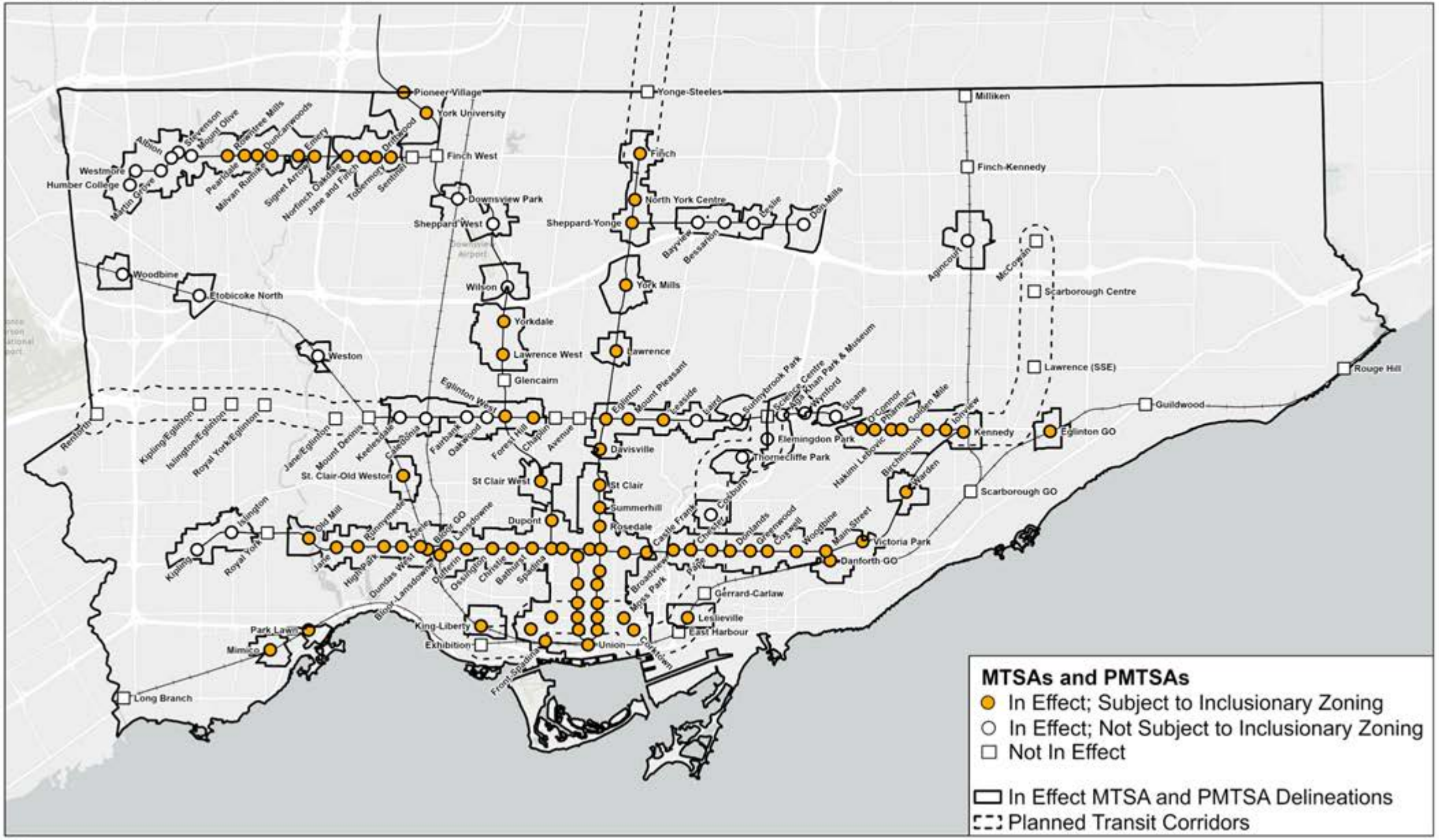
- Subset of Major Transit Station Areas that must be delineated in an official plan, accompanied by certain prescribed policies identified in the *Planning Act*
- PMTSA policies in an official plan must be approved by the Minister and cannot be exempt from approval under s. 17(9) of the *Planning Act*

Inclusionary Zoning

- Only allowed in Protected Major Transit Station Areas or where a Community Planning Permit System is in effect
- A policy instrument to require that a certain percentage of **affordable housing units** be provided alongside market housing
- Intended to address the housing needs of low- and moderate-income households by ensuring that affordable housing, both **rental** and **ownership**, keeps pace with market housing

Toronto Key Map

TORONTO Key Map of Major Transit Station Areas and Protected Major Transit Station Areas



Planning Research and Analytics, Toronto City Planning - 08/22/2025

Transit Oriented Communities Program

- The Province of Ontario announced the "Transit-Oriented Communities" (TOC) initiative in July 2020
- The program aims to build vibrant, sustainable, mixed-use communities within walking distance of transit stations along priority transit lines (including the Ontario Line)
- The TOC Program aims to:
  - Increase transit ridership and reduce traffic congestion
  - Increase housing supply (including affordable housing) and jobs
  - Stimulate the economy through major projects for years after COVID-19
  - Bring retail and community amenities (for example, libraries) within walking distance of public transit stations
  - Offset the cost of station construction, which would save taxpayers money
- For illustration, the Exhibition Station site consists of two parcels that have been designated for TOC use









Leveraging Transit Investments*

Step 1: Aggressively up-zone around transit corridors



Step 2: Require x% (20?) of up zoned housing to be affordable *in perpetuity*

Step 3: Exempt all affordable units from:
- ✓ Land costs
- ✓ All government fees
- ✓ Typical municipal parking ratios

Step 4: Developer delivers affordable units to a non-profit housing provider for $200k *or less*

Step 5: Non-profit:
- ✓ Selects eligible occupants / buyers
- ✓ Prepares them for success as owners / renters
- ✓ Arranges financing through mortgages, etc.

Step 6: Non-profit ensures long-term affordability through:
- ✓ Rental / supportive housing with eligibility criteria for occupants
- ✓ Restricted equity ownership units with eligibility criteria for owners and resale required to the non-profit

Step 7: Support long-term affordability by right-sizing property taxes to reflect restricted value of the affordable units

The Economics

For the developer
- Lost profit and net costs of delivering affordable units are offset by net gains from sales of the up-zoned market units

For governments
- Larger proceed on sale of land realized as a result of up-zoning
- Forgone proceeds from land and government fees offset by proceeds/fees from the upzoned market units

The Politics

- Criticisms from municipalities and various interest groups can be off-set by new housing for:
  - Millennials
  - Older citizens who are downsizing
  - Households needing affordable housing
- Optics of developer gains offset by:
  - Requirement of affordable housing
  - Participation of non-profits

Why the need for non-profits?

- Developers strengths are building homes and moving to the next project
- Long-term affordability requires:
  - Recruitment/selection of eligible occupants
  - Ongoing administration of affordability requirements
- And….non-profit participation increases public trust/credibility of the commitment to affordable housing
- Non-profits have and are growing the capability to engage in big, complex projects

*Working concept from Habitat for Humanity GTA, February 2020

GO Heavy Rail/LRT Development Program

Transit–Oriented Communities (TOC) are higher density, mixed-use developments that are connected, next to or within a short walk of transit stations. The **GO Heavy Rail/LRT Development Program** is transforming access to regional transit across the Greater Golden Horseshoe, in support of Metrolinx's Regional Transportation Plan and Go Expansion. It is stimulating the delivery of jobs and housing closer to existing and planned transit, creating ridership growth, and economic development across 35 municipalities*.

50+
Active Projects & Partnerships (including Entrance Connections)

Up to 221,450 housing units
Total housing units for the GO/LRT portfolio (20-30+ yr timeframe)

Up to 73,648 housing units
Total housing units for the GO/LRT portfolio estimated to be completed by 2031

Over $1.73B
Capital Cost Avoidance (Market Driven)

$269M
Non-fare Revenue over last 4 fiscal years

Up to $921M
Additional Long-Term benefits**


Increases transit ridership and reduces traffic congestion.


Increases housing supply (including affordable housing) and jobs.


Catalyzes complete communities based on good planning principles.


Offsets the cost of transit infrastructure which saves taxpayers' money.


Stimulates the economy through major projects for years after COVID-19.

Figures and totals provided by Metrolinx
**includes ridership, retail and parking revenue*

Thank you

Ontario Land Tribunal

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https://olt.gov.on.ca/subscribe/

LAW PANEL

CASES & ISSUES IN DEVELOPMENT LAW

PANEL MODERATOR

HARRY HERSKOWITZ
Managing Partner, DelZotto, Zorzi LLP.

GENA ARGITIS
Chief Operating Officer, Tarion.

SANDRA ASTOLFO
Partner, WeirFoulds LLP.

MARIA DIMAKAS
Lawyer, DEO Condominium Lawyers.

SILVANA D'ALIMONTE
Partner, Blake, Cassels & Graydon LLP.

CARMEN BRUNI
AI Lawyer, Legal Operations, Osler, Hoskin & Harcourt LLP.

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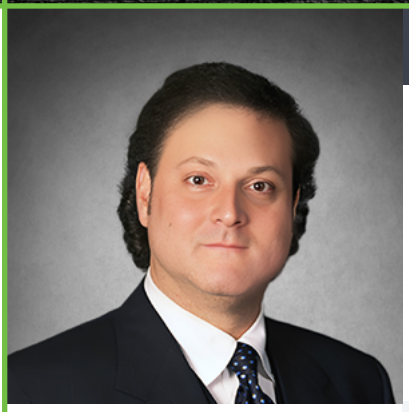

PANEL MODERATOR

HARRY HERSKOWITZ

Managing Partner, DelZotto, Zorzi LLP.

Harry Herskowitz is a graduate of Osgoode Hall Law School and was called to the Bar of Ontario in 1979. Harry is qualified as an arbitrator/mediator, having completed a course in arbitration/mediation at the University of Toronto's School of Continuing Studies in 1994.

Harry's practice is devoted to real estate, mortgage lending and commercial transactions, with emphasis on land development and condominium law. Harry's practice also includes arbitrating disputes involving commercial real estate transactions and condominium issues, and providing legal opinions on various aspects of real property law.

Harry has represented numerous subdivision and condominium developers throughout Ontario, from simple stand-alone residential projects to complex mixed-use, multi phased and leasehold condominium projects. Harry is qualified as an expert witness before the Ontario Superior Court of Justice, and frequently provides opinions on real estate conveyancing and condominium issues.



GENA ARGITIS

Chief Operating Officer, Tarion.

TOPIC: Cancelling a condominium project (ie. due to insucient sales, or the inability to procure satisfactory financing)--- a discussion about what information and/or documentation Tarion Warranty Corporation requires from the declarant in these circumstances.

Gena Argitis joined Tarion in March 2005 as Corporate Counsel after practising at McCarthy Tétrault LLP. She was promoted to the position of Assistant Vice President and Associate General Counsel in 2015. In 2020, she became Vice President and Chief Administration Officer, responsible for management of human resources, stakeholder relations and communications. She was promoted to Chief Operating Officer in 2024.

Gena graduated with a silver medal from the University of Toronto Faculty of Law and also holds a Master's degree in Clinical Psychology from the University of Waterloo. She was called to the Ontario bar in 2002.

TARION

SUPPORTING YOUR NEW HOME WARRANTY

Cancelling a Condominium Project

Tarion Requirements

Gena Argitis, Tarion COO



Cancelling A Project

A vendor/builder may cancel a project in certain circumstances, such as:

1. One or more of the following conditions in the APS have not been satisfied:
   - necessary development approvals are not obtained;
   - specified sales threshold is not attained; and/or,
   - satisfactory financing for the project is not obtained; OR
2. The project or a portion of the project will not proceed because of an event or circumstance which results in APS becoming incapable of completion at law (e.g. frustration of contract).

The vendor/builder should notify Tarion in writing in advance if they believe they may cancel the project **before taking any steps** to actually cancel the project.

Requirement to Notify Tarion

This requirement and Tarion's cancellation review process helps to:

1. Protect purchasers and the Guarantee Fund
2. Ensure transparency and regulatory oversight
3. Identify patterns or risks that may affect future condominium projects
4. Support informed decision-making by Tarion and the HCRA

This requirement is outlined in more detail in **Registrar Bulletin 17** which can be found on Tarion.com

Cancellation Process

1. Initial Notice and Review
2. Detailed Review
3. Deposit Protection Review
4. Releasing Security

Initial Notification and Review

Once Tarion becomes aware of an actual or potential cancellation, the information is tracked internally and shared through Tarion's data-sharing processes with the Home Construction Regulatory Authority (HCRA).

The vendor/builder will be asked to provide the following information at the outset:

- Date of termination
- Number of terminated/mutually released purchase agreements
- One executed APS
- Copy of termination notice to purchaser

Initial Notification and Review

As part of its review, Tarion determines whether the cancellation is:

- **Full** – the project will not proceed and units will not be resold, or
- **Partial** – some or all APSs are terminated, but the project is intended to proceed and units may be re-marketed

This distinction determines whether sales and construction must be halted during the review and if there are impacts to a vendor/builders Qualification for Enrolment (QFE) allotment.

Detailed Review

Tarion will issue a written request to the vendor/builder seeking detailed information about the cancellation, including:

- Confirmation of whether and when purchasers were notified
- Details on the number of purchase agreements signed, terminated, or mutually released
- The reasons for the cancellation as well as current project status and future plans for the site
- Copies of key documents, such as the Agreement of Purchase and Sale (APS) and termination notices
- Information on purchaser deposits and how they are being handled

Documentation Requirements

At a minimum, Tarion may require the following documents:

- Sample executed Agreement of Purchase and Sale (APS) and Addendum
- Termination notice(s) provided to purchasers
- Written explanation and supporting documents outlining the reason(s) for cancellation
- Confirmation of APS counts (signed, terminated, mutually released)
- Deposit accounting details, including escrow agent information
- Statutory declaration from the vendor
- Statutory declaration from the escrow agent
- Evidence of deposit refunds, if requested

Please Note: Tarion may request other evidence as part of the review

Deposit Protection Review

A central focus of Tarion's review is confirming that:

- All purchaser deposits (including upgrades and extras) have been refunded within 10 days, as required by the Addendum and the Condominium Act,
- Interest on the deposit has been paid to the purchaser (if accrued),
- Purchasers were not compelled to sign a mutual release as a condition of receiving their deposit refund,

Please Note: If deposit refunds are delayed or incomplete, Tarion may escalate the matter to HCRA, seek additional assurances, and/or impose restrictions on future projects until the issue is resolved.

Releasing Security

Before the release of security for the project, Tarion requires:

- A **statutory declaration from the vendor** confirming project details, the cancellation, and that all deposits have been returned
- A **statutory declaration from the escrow agent** confirming deposits were handled appropriately and returned to purchasers
- Supporting evidence, such as refund cheques or purchaser letters may be requested

Security is released **only when** Tarion is satisfied that purchaser deposits are fully protected.

Tarion's Industry Update


TARION 50 YEARS

Industry Update

Industry Update provides you the latest updates from Tarion about the new home warranty policies and processes.

March 6, 2026

Tarion Launching New Builder Dispute Resolution Pilot

As part of our commitment to regularly review and improve our processes, Tarion is piloting a new step in the Builder Arbitration Forum (BAF) process with the goal of resolving builder disputes faster and at no cost to the builder.

A builder who disagrees with a Tarion warranty assessment or chargeable conciliation determination may dispute Tarion's findings at BAF. BAF, which is

Newsletter with key information and updates for builders and industry professionals.

Email StakeholderRelations@Tarion.com to be added to the list.

Get Updates and Other Resources @Tarion.com





SANDRA ASTOLFO

Partner, WeirFoulds LLP.

TOPIC: Recent amendments to Ontario's Construction Act regarding the mandatory release of holdback, the elimination of set-os against the holdback, deeming invoices to be proper (unless the owner notifies the contractor within prescribed times), construction lien periods and private adjudication process for resolving disputes.

Sandra Astolfo is a partner at WeirFoulds with a practice devoted to infrastructure and construction law. She has worked with her clients for more than 30 years and is a frequent speaker at continuing legal education programs and industry conferences. From negotiating construction agreements, to providing contract administration advice, to litigating, mediating, and arbitrating disputes, she advocates on behalf of all project participants. She also assists her clients with protecting their interests in the event of a project participant's insolvency. She is a fellow of both the Canadian College of Construction Lawyers and the Construction Lawyers Society of America. Both are associations composed of outstanding lawyers who are distinguished for their skill, experience, and high standards of professional and ethical conduct. She is certified by the Law Society of Ontario as a specialist in construction law and has authored numerous articles on various construction law topics. She is the recipient of the Ontario Bar Association's 2019 Construction and Infrastructure Law Award of Excellence and is the first female recipient of the award. She has been repeatedly recognized by Chambers Canada and Best Lawyers in Canada as a leading lawyer in construction law.



SILVANA D'ALIMONTE

Partner, Blake, Cassels & Graydon LLP.

TOPIC: Fraudulent representations involving the agreement of purchase and sale – what does Ontario case law require the innocent party to prove, and what remedies are available if the fraud is discovered before the closing has transpired, or after the transaction has been completed, and any other salient points distilled from the courts

Silvana has 35 years of commercial real estate experience. She has worked on a wide variety of transactions, with an emphasis on real estate financings, joint ventures, acquisitions and dispositions of commercial real estate properties, receivership sales, security enforcement and restructurings.

Silvana is committed to providing clients with timely, high-quality service and strives to provide practical, effective advice to help achieve the client's goal.

Silvana is a member of the Blakes Executive Committee.

Silvana has written numerous articles on real estate matters, including loans to joint ventures, due diligence in real estate financings and tendering in an electronic registration environment. She has spoken at several conferences held by the Law Society of Ontario, the Canadian Institute, Federated Press and the Ontario Bar Association, as well as on various real estate matters at student and associate training seminars.

Silvana is a member of the American College of Mortgage Attorneys.



MARIA DIMAKAS

Lawyer, DEO Condominium Lawyers.

TOPIC: Noises within a condominium ... what does Ontario case law stipulate regarding noise that is reasonably expected (and should be condoned) versus noise that is excessive and/or unrelenting (and intolerable)... a discussion of the case of Frankel v. YRCC No. 664, and some guidance as to when noise falls within the purview of Section 117 of the Condominium Act and becomes unacceptable and worthy of court intervention.

Maria is an Osgoode Hall law graduate called to the bar in 2005. It was a chance encounter during a routine business matter early in Maria's professional career that she was introduced to Mario Deo and since then has been practicing exclusively in Condominium Law.

A skilled negotiator and tenacious problem solver, Maria takes a practical and strategic approach to advising and representing condominium corporations. Clients appreciate and rely on Maria's integrity, attention to detail, ability to put them at ease, and the priority she places on providing timely, accurate and practical advice. This approach is what enables her to be a realistic voice, providing clients with compelling guidance and the expertise that they require. Maria strongly believes that her clients deserve nothing less than exemplary service.

Maria writes and speaks extensively on condominium law. She has had work published in Condo Voice magazine and has spoken at ACMO/CCI's Annual Condominium Conference. She is a member of the Canadian Condominium Institute (CCI) and the Association of Condominium Managers of Ontario (ACMO).

Noise in Condominium Living

DEO CONDOMINIUM LAWYERS

- Noise disputes represent one of the most prevalent and complex sources of conflict in condominium living.
- High-density residential development has intensified the legal and practical challenges associated with noise in condominium environments. As people increasingly occupy vertically integrated and acoustically connected spaces, disputes concerning sound transmission have become more frequent and legally significant.
- The disputes often involve competing interests: The expectation of quiet enjoyment v. The realities of communal living.

Foundational Principles

DEO CONDOMINIUM LAWYERS

- **Reasonable Quiet Enjoyment:** Occupants are entitled to reasonable quiet enjoyment - not absolute silence. The jurisprudence has consistently held that ordinary and expected noise must be tolerated as part of ordinary condominium life – i.e. routine activities associated with residential use.

- **Unreasonable Interference:** The legal threshold is not whether noise is subjectively annoying or irritating, but whether it constitutes a substantial and unreasonable interference when assessed objectively from the standpoint of a reasonable person.

- **Substantial Interference:** The interference must be material. Transient, occasional, trivial and fleeting disturbances will not meet the threshold. The noise must significantly impact an occupant's ability to use and enjoy their unit.

- **Objectively Unreasonable:** Many complaints arise from sensitivities that, while genuine and often sincerely experienced, do not meet the threshold. The assessment involves a consideration of the nature, intensity, frequency and consistency of the noise.

Section 117 of the Condominium Act: Noise as a Harmful Condition

DEO CONDOMINIUM LAWYERS

"Prohibited conditions and activities

117(1) No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

Same

(2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation; or

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation."

Section 117 of the Condominium Act: Noise as a Harmful Condition…CONT.

DEO CONDOMINIUM LAWYERS

- Section 117 of the Condominium Act prohibits any activity or condition, whether in a unit or the common elements, if it is likely to cause damage, or cause injury or illness to an individual.
- The jurisprudence has interpreted Section 117 to include not only physical injury or harm, but also psychological injury or harm, reflecting a broader and more contemporary understanding of harm.
- Noise, when sufficiently persistent and intrusive, may no longer be viewed merely as an inconvenience, but as a condition capable of undermining an individual's health and well-being.

Frankel v. York Region Condominium Corporation No. 664, 2025 ONSC 719

DEO CONDOMINIUM LAWYERS

Facts

- The unit was located below a mechanical room containing water pumps. The owner experienced persistent low-frequency tonal mechanical noise from the pumps into his bedroom. The frequency of the sound waves was measured at 160 Hz.
- The overall sound levels, including the tonal sound, were measured below ASHRAE and WHO standards, but the tonal sound was appreciably louder than the background noise. The unit owner vacated the unit.
- What does 160 Hz sound like? 

Finding

- The Court found as a fact that the owner experienced sleep deprivation, which was not trifling, and could lead to other adverse health consequences, offending both subsections 117(1) and 117(2) of the Condominium Act.
- The Court made a finding under the oppression remedy in Section 135 of the Condominium Act, because the condominium had breached the owner's reasonable expectations, and the breach arose out of oppression, unfair prejudice or unfair disregard of the owner's interests.

The Remedy

- Section 135 of the Condominium Act permits the Court a wide discretion to fashion a remedy for the oppression, and can be monetary, specific performance or both.
- In *Frankel*, the Court ordered the condominium to remedy the harmful sound intrusion by whatever means are necessary, and ordered monetary compensation.

Implications for Builders

DEO CONDOMINIUM LAWYERS

- Design and acoustic considerations
- Unit configuration and disclosure
- Post-construction responsibilities



CARMEN BRUNI

AI Lawyer, Legal Operations, Osler, Hoskin & Harcourt LLP.

TOPIC: The utilization of artificial intelligence to streamline the day-to-day business operations of builders and developers, including the correspondence with homebuyers, the contracts and purchase orders with trades, the project budgets with construction lenders, and the sale agreements and condominium documents for the project(s) being developed.

Carmen Bruni is a member of Osler's Legal Operations team focused on the operationalizing of AI initiatives across the firm. As a lawyer, she uses her knowledge of legal process, and an understanding of practice needs to design tailored AI training programs for the firm and coordinate with practice group chairs to integrate AI into their workflows.

Prior to joining Osler, Carmen practiced corporate law both in-house at a market leading financial institution and in private practice as part of the alternative legal services team of a major law firm.

LANDPRO CONFERENCE 2026

PRESENTATION

BUILDING BETTER: REGULATORY NAVIGATION & THE DELIVERY EXPERIENCE

KENT FORTUNE
Principal, Fortune Customer Care Professionals Inc.

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TOPIC: BUILDING BETTER: REGULATORY NAVIGATION & THE DELIVERY EXPERIENCE

KENT FORTUNE

Principal, Fortune Customer Care Professionals Inc.

Kent Fortune is the founder and owner of Fortune CCP. Kent uniquely balances the interests of developers with a strong advocacy for enhanced customer service and consumer protection. He specializes in offering customer service guidance and Tarion consulting.

With a keen understanding of the challenges and opportunities in the real estate sector, Kent guides developers towards practices that not only comply with Tarion Warranty Corporation regulations but also promote higher customer service standards. His approach is rooted in the belief that better customer experiences lead to more sustainable and successful developments.

Kent's expertise lies in navigating the complex intersection of developer interests, customer satisfaction, and regulatory compliance. He advises developers on how to enhance their customer service strategies, ensuring that consumer rights and protections are upheld, which, in turn, elevates the industry's standards.

Through Fortune CCP, Kent has become a respected figure in Ontario's warranty scene, known for his balanced perspective and commitment to improving the landscape of customer service in development projects. His work is a testament to the idea that business success and consumer advocacy can go hand-in-hand.

FORTUNE
CUSTOMER CARE PROFESSIONALS

Building Better

Regulatory Navigation & The Delivery Experience

LandPRO 2026

"Purchasers pay for 100% of a home; why are we comfortable delivering less than 100%?"

Session Overview



The Regulatory Landscape

How HCRA and Tarion have changed and what that means for day-to-day builder operations, licensing obligations, and warranty exposure.

With the real estate market in turmoil, purchasers are increasingly on edge and looking for reasons to get out of their deal.



The Delivery Experience

Why QC, PDI, and key release are no longer just customer service and how a higher delivery standard reduces claims, complaints, and regulatory risk.

The landscape is changing — the lowest-cost, highest-reward response is to raise the delivery standard.

Two Regulators, Two Mandates

HCRA
Home Construction Regulatory Authority

- Licenses builders and vendors
- Enforces the Code of Ethics
- Investigates illegal building
- Responds to conduct complaints
- Focuses on how buyers are treated

Tarion
New Home Warranty Program

- Administers the new home warranty
- Sets the Customer Service Standard
- Manages claims and conciliations
- Tracks builder performance data
- Focuses on what was built and warranted

When delivery goes wrong, both regulators can become involved simultaneously.

HCRA: Code of Ethics — What It Means in Practice

Fairness & Honesty

No surprises at closing; what you promise in sales must match what you deliver.

No Intimidation

PDI reps, closing staff, and sales agents are part of your regulatory risk profile.

Competent Service

Reasonable communication, follow-through on commitments, proper supervision of trades.

Accurate Marketing

Representations made during sales must align with the completed home.

Records & Documentation

HCRA expects proper business records and full cooperation during investigations.

Obstruction is Prohibited

Discouraging buyers from filing warranty claims can itself become a complaint.



Tarion: Key Changes & Practical Shifts

Standards **CPG Consultation**

Tarion sent out proposed CPG (Construction Performance Guidelines) changes in February 2026.

New Coverage **Temporary Relocation Warranty**

Builders may be responsible for daily living allowances when warranted repairs make the home uninhabitable.

Process **New Customer Service Standard**

Effective May 1, 2024 — revised claim timelines, updated grace periods, new freehold notice requirements.

Beyond the Text

- Major Structural Defects
- 2nd Year Health and Safety
- Use of the CPG
- Changes to BAF
- Professional Buyers

The Home Delivery Journey

Quality Control

Before the buyer arrives

Internal or third-party walk. Fix issues while the home is still in builder control — easier, cheaper, less emotional.

PDI

The last chance for a good first impression

Room-by-room. System-by-system. A PDI is your chance to educate and demonstrate quality — not to discover how far you missed the mark.

Key Release

The moment of truth

How keys are handed over, issues acknowledged, and expectations set for follow-up. This is where trust is built or broken.

Best Practices Across the Delivery Journey

QC	PDI	Key Release
Develop checklists for each stage of construction. This should be an iterative process.	Pre-check the home before the homeowner arrives – no surprises.	Review the condition of the home the day before closing. Ensure the keys work and the home is in the best condition possible.
When possible, create a "mock unit". Work out the details before you start finishing in the rest of the development.	Record defects accurately and completely. Avoid general language like "throughout".	Where possible conduct the key release in person. Review all items from the PDI, get acknowledgements where possible.
Conduct a final QC check with a fresh set of eyes. Schedule early enough for trades to address issues before PDI, ideally 2 weeks.	Focus on education, not disputes. If a homeowner is concerned, share your knowledge but items should go on the list if the buyer still has concerns.	Track your results. Number of outstanding defects at occupancy is the greatest indicator of homeowner satisfaction.



Pitfalls That Drive Claims, Complaints & Regulatory Scrutiny

A Focus on Schedule, not Quality

If the owners only priority is getting a closing, quality will always suffer.

Unrealistic Budgets

Deferred cost budgets that are pilfered for construction overruns leave no money for effective service.

Poor Cleanliness

Purchasers expect to find deficiencies, but an unclean home shows a lack of care and respect.

"Leave that for Service" Syndrome

If construction is only held accountable to the schedule, it creates pressure to leave defects for the service teams.

The Verbal Promise

To minimize lines on the PDI, some vendors make verbal commitments like "don't worry, that'll be done before closing". Many are never recorded and never fulfilled leaving a purchaser feeling lied to.

The Cost of a Bad Delivery Experience



Direct Financial

More claims, conciliations, site visits

Trade call-backs; delayed closings

Legal fees; potential holdbacks



Regulatory

Higher volumes affect Tarion performance scores

Patterns of complaints may trigger HCRA review

Discipline, conditions, or license suspension



Reputational

Negative word-of-mouth to agents and lawyers

Pressure from boards and lenders

Long-term brand damage



Opportunity Cost

Time spent firefighting is time not spent on:

- new deals,
- new projects,
- or meaningful process improvements.

Raising the Bar

"A warranty is a safety net, not a delivery strategy."

Make a great first impression with a clean complete home at PDI.

Strive for a defect free home at the time of closing, saving costs and improving customer satisfaction.

Stay informed and get involved. Join your local HBA, subscribe to Tarion's builder updates, and follow the CPG consultation. Meet evolving expectations — don't just manage them.

Thank You

Questions?

Kent Fortune
Principal

Fortune Customer Care Professionals Inc.

Kent.fortune@fortuneccp.com



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PRESENTATION

INNOVATION & DELIVERY: MODULAR CONSTRUCTION

LEITH MOORE
Founder and Principal, Assembly Corp.

HAILEY QUIQUERO
Senior Manager, WoodWorks Ontario.

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TOPIC: INNOVATION & DELIVERY: MODULAR CONSTRUCTION

LEITH MOORE

Founder and Principal, Assembly Corp.

35 years in all forms of residential construction. Founded Waverley Projects Inc. in 2016, focused on creative infill development. VP of Development for the Sorbara Group of Companies (1985-2014). Director of Sustainable Buildings Canada. Past Chair of BILD. Past President of OHBA. Past Chair of Evergreen.



TOPIC: INNOVATION & DELIVERY: MODULAR CONSTRUCTION

HAILEY QUIQUERO

Senior Manager, WoodWorks Ontario.

Hailey is a structural engineer specializing in sustainable architecture and the advancement of timber building systems. Her career has spanned research in mass timber & fire safety, structural design consulting, and building prefabricated timber housing projects. In her current role as a Technical Manager for the Canadian Wood Council's WoodWorks program, Hailey works with the team to aid project teams with technical support and to bring resources and education to industry stakeholders, advocating for the successful implementation of a natural and sustainable building material in our built environment.



Assembly

Wood Works

Innovation & Delivery: Modular Construction

SPEAKERS





Leith Moore | Assembly Corp.
Founder and Principal

Assembly



Hailey Quiquero | WoodWorks Ontario
Senior Manager

WoodWorks



60 Bowden St.


Assembly
60 Bowden St.



60 Bowden St.



H+ME Technology / Great Gulf



H+ME Technology / Great Gulf



215 Wellesley St. E


215 Wellesley St. E



215 Wellesley St. E





Panelized Building Solutions


981 Dundas St. W


981 Dundas St. W



Kalesnikoff


Kalesnikoff


Kalesnikoff


1120 Ossington Ave.


1120 Ossington Ave.


2217 Kingston Rd.


2217 Kingston Rd.



2217 Kingston Rd.


7 Vanauley St.


7 Vanauley St.

PRESENTATION

EVERYTHING ABOUT PETS: RULES, RUNS, WASHES & RESALE IMPACTS

PATRICIA ELIA
Barrister and Solicitor (Condominium and Corporate Law),
Elia Associates Professional Corporation.

JULIAN MCNABB
CEO, Melbourne Property Management.

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TOPIC: EVERYTHING ABOUT PETS: RULES, RUNS, WASHES & RESALE IMPACTS

PATRICIA ELIA

Barrister and Solicitor (Condominium and Corporate Law), Elia Associates Professional Corporation.

As a condominium and corporate lawyer, Patricia's practice of 28 years encompasses all aspects of corporate work for condominiums including policy creation, rules drafting, contract review and negotiation, condominium lending, shared facilities agreement rewrites, Tarion claims, construction deficiency claims, termination of agreements under the Act, addressing first year operational issues, breaches of contract by suppliers, termination of employees and suppliers, declaration amendments, communication strategies, chairing of meetings and litigation support.

Patricia supports her condominium clients in all aspects of their condominium communities by finding solutions within the statutory framework of the Condominium Act, 1998 and other applicable legislation to manage the risks condominiums face today. From Tarion to compliance to privacy to safer banking methods, the EA team is dedicated to achieving comprehensive and cost- effective solutions that work for all of Elia Associates' clients. Our corporate clients rely on Patricia to support their financing, acquisition and structuring needs and to develop their policies and procedures in accordance with applicable laws.

She understands what it is like to be a director of Condominium Corporation because she has been one for approximately 20 years for both a multi-storey and townhouse complexes. Patricia adds value via her experience and works with her board members to effect smooth and cost-effective operations.

Patricia is and continues to be an active speaker, writer and participant in the condominium industry. Currently, she is working on a variety of industry related programs and committees with a view to facilitating awareness and knowledge for unit owners, directors, property managers and condominium communities as a whole. Knowledge is power.



TOPIC: EVERYTHING ABOUT PETS: RULES, RUNS, WASHES & RESALE IMPACTS

JULIAN MCNABB

CEO, Melbourne Property Management.

Julian serves as the CEO of Melbourne Property Management, where he provides strategic leadership and direction for the entire organization. He oversees all aspects of the company's operations, including Property Management, Accounting and the Consulting Division, ensuring seamless service delivery, operational efficiency, and client satisfaction. Julian's forward-thinking leadership fosters innovation, supports staff development, and drives the company's ongoing growth and success in the condominium management industry. With extensive experience and a well-earned reputation as a respected leader in the condominium management industry, Julian brings invaluable insight and strategic guidance to the organization. His expertise is sought after by many of Ontario's top condominium developers, who rely on his consultancy services to ensure successful project development and management.

Throughout his career, Julian has contributed to over 900 condominium projects across Ontario, demonstrating his unparalleled knowledge of the industry. He is particularly passionate about the development and training of property managers, helping them acquire the essential skills and understanding the needs to meet evolving clients' and resident expectations. His dedication to mentoring has played a pivotal role in shaping confident, capable leaders who are well-equipped to navigate the dynamic condominium landscape.

Julian's industry influence extends beyond his consultancy work. He has been a frequent speaker and presenter at prestigious events, including LandPro, Realtor Quest, BILD, and CCI/ACMO conferences. He has also served on the CCI-Toronto Chapter Board of Directors and the Communications Committee, where his contributions have helped advance best practices and foster industry collaboration. His commitment to excellence and innovation continues to drive positive change in the condominium management sector.

Everything About Pets: Rules, Runs, Washes & Resale Impacts?

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CONDOMINIUM LAWYERS
CONDOCENTRIC.ca

MELBOURNE PROPERTY MANAGEMENT

SO WHY PETS?



- Important for sales.
- Important for design.
- Important for residents.
- Important for harmonious living.

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MELBOURNE PROPERTY MANAGEMENT



- We have to consider Pets as part of the sales and design process and create policies and legal governing documentation to accommodate these cute fury friends.
- From a management perspective, post pandemic, we have seen a large increase in the number of residents who own pets. For the most part, today's discussion will focus on dogs, as they are the pet we see most leaving the unit and using common area hallways and elevators going to and from the building.
- That being said, it is important that the governing documents such as the Declaration, address all pets, including cats, birds, reptiles, attack dogs or specific breeds, fish and the number of pets each unit can house is important.

- Important to plan for owners and residents who do not have pets, and help protect them and minimize any inconveniences.
- Dog bites – we had an instance we a resident was bitten by a dog in the elevator, and then the leg got infected and city of Toronto public health was involved. The building had a no bite policy meaning that if a dog was found to have bitten anyone, they were to be evicted from the building.
- Consequence of not following the governing documents
- Case call – legal fees, court rulings and subsequent enforcement costs and power of sale



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- Amenity Areas for Pets as well as poop bags made easily accessible for pet owners. Dog treats at concierge.

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MELBOURNE PROPERTY MANAGEMENT

Life in a Condo Post Registration

We want people to enjoy their investment

- In addition to the Act, the Declaration, By-laws and Rules are vital to ensuring that condominium owners can live in harmony and enjoy their investment
- The Declaration, the Bylaws and Rules set expectations on performance for both the Board of Directors and unit owners
- Accordingly, when it comes to Pets, we need to think about
  - Animals permitted in the condominium corporation
  - Service animals are not Pets and Pets are not Service Animals
    - Accordingly, drafting in the Declaration, bylaws and rules should reflect these differences and take into account the need for human rights compliance which trumps the Act, the declaration, bylaws and rules



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MELBOURNE PROPERTY MANAGEMENT

How are unit owners using Human Rights Legislation?

- These days many unit owners are stating that their dogs and cats are service animals
- However, many of these animals are not trained to be service animals
- Service animals are contemplated under the AODA
- Thus, an escalation in animal populations in condominiums is inevitable
- Management of the same in various baskets is key



Condominium Documents

Declarations should have:

- Robust indemnities for damages to units, common elements and for the costs incurred in the course of compliance at the 4th level of government
- Confirmation of what types of animals will be permitted pets and that service animals will be accommodated, subject to the Board's rules and policies
- Bylaws should contemplate the process of accommodation and acknowledge that the Board will have the same



What do Unit Owners dispute?



The merits of a Service Animal Policy (Martis v. Peel Condominium Corporation no. 253 and Potok v. YRCC No. 865)

The Removal of Animals (Niagara North Condominium Corp. No. 46 v. Chassie)

The Removal of Barking Dogs (TSCC No .2370 v. Chong)

The Veracity of Emotional Support Animals (DCC NO. 136 v. Crowther and WNCC NO. 37 v. Baha)

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What do Boards have to be concerned about?

- Enforcing bans on Pets
- Creating Human Rights Accommodation Police
- Competing Human Rights interest
  - Cross contamination in common areas triggering illness
- Operating the Corporation cost effectively and within the law
- When we make Pets and Service Animals part of the norm through constating documents, we set expectations which are easier to enforce.



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MELBOURNE PROPERTY MANAGEMENT

CLOSING REMARKS & PRIZES

MASTER OF CEREMONIES

SARAH TURNEY

Partner, Fasken Martineau DuMoulin LLP.

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MASTER OF CEREMONIES

SARAH TURNEY

Partner, Fasken Martineau DuMoulin LLP.

Sarah Turney is an advocate with extensive experience in real property, development and construction litigation. She works with clients to solve complex disputes arising from real property.

Sarah's litigation practice focuses on real property disputes. She advises clients on complex easement and title matters, boundary disputes, adverse possession claims, mortgage claims and commercial lease remedies. Sarah is recognized for her in-depth knowledge of real property and is able to provide efficient, strategic advice on a broad range of real property matters.

Sarah was recognized as a "Rising Star: Leading Lawyer under 40" by Lexpert in 2019. Winners of these highly competitive awards are selected by a distinguished advisory board. In selecting winners, the advisory board considers contributions to the firm, legal profession, and larger community.

Sarah's municipal and planning practice includes property tax assessment, zoning and other planning appeals and expropriation matters. Sarah advocates for clients before the Ontario Land Tribunal and the Assessment Review Board.

As a former program coordinator with the City of Ottawa, Sarah has experience with government relations and policy development at the municipal level.

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