

WEDNESDAY MARCH 3RD 2021

ONTARIO'S LAND CONFERENCE



LANDPRO
CONFERENCE
2021

**THE PREMIER
"HOW-TO" CONFERENCE FOR LAND,
CONDO, AND DEVELOPMENT
PROFESSIONALS**

DATE: WEDNESDAY MARCH 3RD 2021

TIME: 8:45 A.M. - 4:00 P.M.

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 - Deanna Chorney, City of Toronto
- 08. Presentation: Automated Parking Systems**
 - Colin Barksby, Kingfisher Technical Solutions Ltd.
 - Thomas Woodhall, BA Consulting Group Ltd.

THANK YOU SPONSORS

PROTECT YOUR
BOUNDARIES



KRCMΛR™

Zeifmans
Ideas with impact



 **TERANET®**

PowerStream
Energy Services
Provided by Alectra Energy Services Inc.



Title PLUS®
TITLE INSURANCE



THE WESTLΛKE

PROTECT YOUR B UNDARIES

Your source for land and boundary expertise.

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.

For Home Owners

Buying, Selling, building or in a dispute, this is your one-stop resource centre for all things boundary-related.

For Ontario REALTORS®

BoundaryWise™ Education, essential tools and services to help you protect your client, your deal and your reputation.

For Land Professionals

Easy instant access to the largest collection of registry and survey documents and services.

www.ProtectYourBoundaries.ca.

ORGANIZER



SURVEY PLANS

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.



LEAD GENERATION

Experts from the Ground Up

PROTECT YOUR
BOUNDARIES

Protect Your Boundaries has officially launched its [Property Listing Pages™](#).

Now whether you are looking for pertinent land information, or are on the hunt for your dream home. You can visit [ProtectYourBoundaries.ca](#).

What Makes us different ?

We are great at getting in the [top 3 spots in Google search results](#) which equals more traffic.

By working with agents on their individual listings, we are able to convert that traffic into [quality leads](#) for the REALTOR™.

We also equip agents with information regarding easements and offer a variety of Property Reports that aid in ensuring a safe and secure sale for both the agent and the client.



EDUCATION

Educational Courses for Agents – [“Understand Land Seminars Series”](#)

We have developed a accredited education program, free for agents, with the goal of providing vital land information that will ultimately aid in the buying and selling process.

We offer 6 courses. [Since 2014, we have delivered over 500 seminars to 10,000 agents.](#)

1. [Surviving the New Boundary Reality](#)

- » How the world of Property Boundaries has changed and what it means to you.
- » Why Title Insurance is no longer enough.

2. [How to Read and Use a Survey Plan](#)

- » How to identify an official survey plan; 3 types of survey plans and where to use them.
- » 6 key features to identify and understand.

3. [The A-Z of Title Insurance](#)

- » What is title insurance and what does a policy cover?
- » How do title insurance companies settle claims?

4. [The Realtor's Guide to Boundary Disputes](#)

- » Explore the Boundary Dispute Resolution Process and learn how to avoid common traps.
- » Learn the best advice to give your clients in a boundary dispute.

5. [Easements & Right-of-Ways](#)

- » What is an easement? How do I know it exists? How do I “place it” on the ground?
- » What are the most common types of easements in the GTA? Which ones cause the most problems to home-buyers?

6. [Condos 101](#)

- » Learn about condo boundaries, marketable square footage vs liveable space; schedule C & D and more.
- » Discover how you can help your clients make better, smarter condo and townhouse buying decisions.

KRCMAR™

Founded in 1983, Krcmar Surveyors Ltd., has become one of the GTA's premier land survey firms, specializing in condominium, commercial and residential surveying.

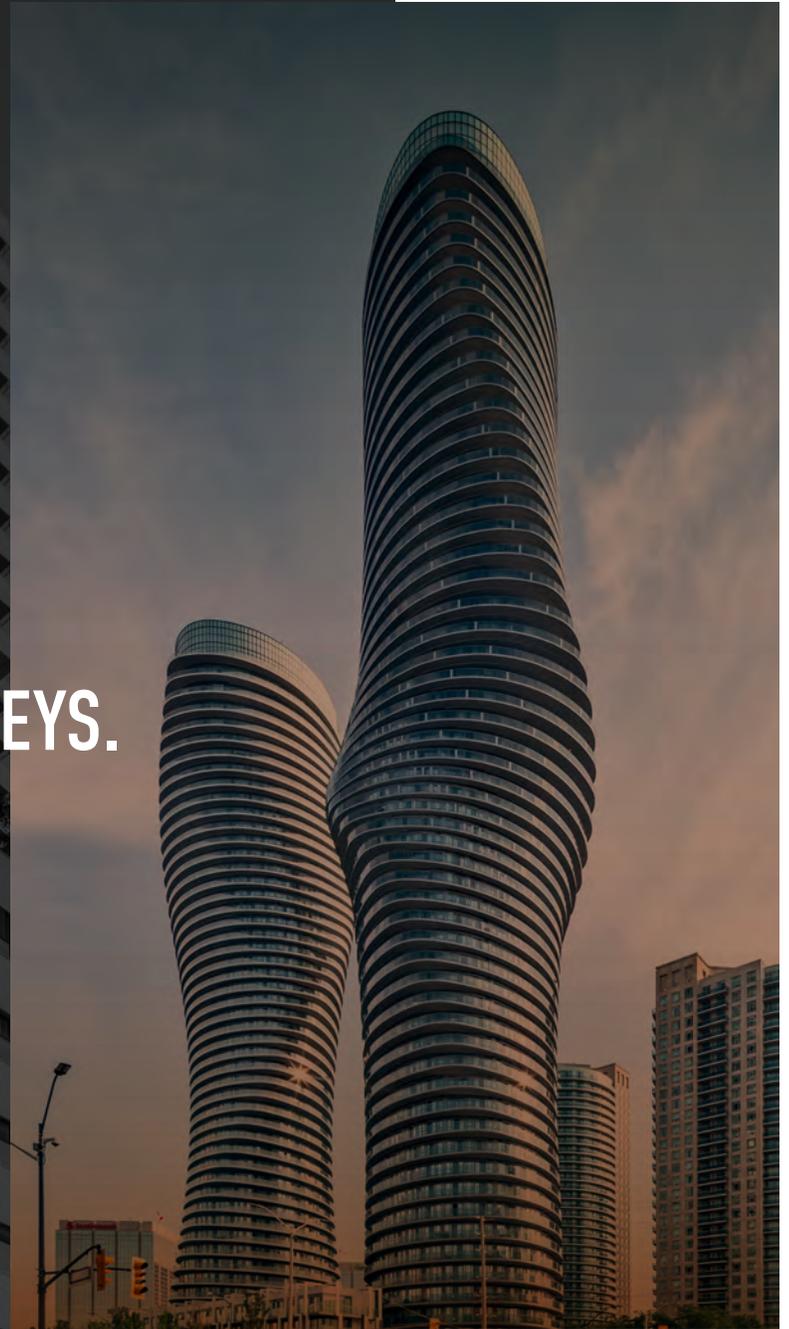
Throughout the GTA, from complex condo development and urban construction to municipal work and transportation projects, Krcmar goes beyond the ordinary to become a valued and trusted member of your development team.

www.Krcmar.ca.

ORGANIZER

KRCMAR™

CONDO DEVELOPMENT.
URBAN CONSTRUCTION.
LAND DEVELOPMENT.
MUNICIPAL &
INFRASTRUCTURE SURVEYS.



KRCMAR SURVEYORS LTD
1137 Centre Street, Suite 101
Thornhill, Ontario L4J 3M6
P 905.738.0053 - F 905.738.9221
info@krcmar.ca - www.krcmar.ca



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 integrity and we pride ourselves on anticipating and surpassing our clients' expectations.

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 professional surveying company with expertise in all forms of cadastral, topographic and engineering surveys.

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.

OUR LEADERSHIP

Committed leadership is what distinguishes our team of professional surveyors and cadastral experts. Everything we do is driven by our passion for great service to clients and our commitment to the highest levels of quality. We have eleven senior surveyors on staff with a combined 350 years of experience between them! They are supported by experienced cadastral field technologists, project directors, skilled CAD specialists and researchers. Together, there is no development challenge or deadline that our team can't meet. The following individuals make up our leadership team:



- Founder and President (since 1980)
- More than 60 years' experience
- Licensed by the Association of Ontario Land Surveyors in 1974
- Subdivision, condominium and development specialist

Vladimir Krcmar
O.L.S.



- Managing Director, with 30 years' experience
- Licensed by the Association of Ontario Land Surveyors in 1995
- Condominium and development specialist

Maja Krcmar
B.Sc., O.L.S.



- Managing Director, with 30 years' experience
- Licensed by the Association of Ontario Land Surveyors in 1995
- Condominium and development specialist

Saša Krcmar
B.Sc., M.B.A., O.L.S.



- Managing Director, with 30 years' experience
- Licensed by the Association of Ontario Land Surveyors in 1997
- Subdivision and development specialist

Tom Krcmar
B.Sc., O.L.S.



- Supervising Project Director, with 30 years' experience
- Licensed by the Association of Ontario Land Surveyors in 1995
- Licensed by the Association of British Columbia Land Surveyors
- High-rise construction specialist

Robert Wiegenbröcker
B.Sc., B.C.L.S.,
O.L.S., O.L.I.P.



- Project Director, with 35 years' experience
- Graduated with a Bachelor of Science in Architecture from the University of Santo Tomas
- Condominium and development specialist

Rodrigo Batol
B.Sc.

OUR LEADERSHIP



J. Eduardo Linhares
B.Sc., O.L.S., O.L.I.P.

- Project Director, with 25 years' experience
- Licensed by the Association of Ontario Land Surveyors in 1998
- Condominium and development specialist



Mansour Ghofrani
B.Eng., O.L.S.

- Project Director, with 20 years' experience
- Licensed by the Association of Ontario Land Surveyors in 2015
- Condominium and development specialist



Sase N. Ramsamooj
O.L.S., O.L.I.P.

- Project Director, with 35 years' experience
- Licensed by the Association of Ontario Land Surveyors in 1984
- Legal survey specialist



Waldemar Golinski
B.Sc., O.L.S., O.L.I.P.

- Project Director, with 21 years' experience
- Licensed by the Association of Ontario Land Surveyors in 2016
- Condominium, construction and development specialist



Michael McKechnie
B.ASc., O.L.S., O.L.I.P.

- Project Director, with 20 years' experience
- Licensed by the Association of Ontario Land Surveyors in 2012
- New construction specialist for large-scale low-rise residential developments

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.



OUR PROJECTS

Amacon

Parkside Village Redevelopment, Mississauga

Aoyuan

M2M Condos - Newtonbrook Plaza Redevelopment, Yonge St.

Bazis

Emerald Park, Yonge St.
Exhibit, Bloor St.

Camrost Felcorp

Yorkville (former Four Seasons)

Carterra

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

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
Garrison Point Redevelopment
Pier 27 Redevelopment

Cityzen/Greybrook

306 Davenport Redevelopment

Collecdev

30 Tippett Rd. Redevelopment
36 Tippett Rd. Redevelopment
Westwood Gardens, Yonge St.

Cortel Group

Expo Condos, Highway 7
Jane/Rutherford Redevelopment
Trafalgar Heights, Dundas St. E Oakville

The Daniels Corporation

Eglinton Ave. W. & Erin Mills Parkway Redevelopment
Regent Park Redevelopment
TIFF/Bell Lightbox
Waterfront, Queens Quay E.

The Daniels Corporation/Diamond/Kilmer

Humber River Hospital Redevelopment, Keele St.

Diamante

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

Dream/Kilmer

Pan-Am/Canary District Redevelopment

Eastons

Dundas Square Gardens, Dundas St. E. & Jarvis St.
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.

OUR PROJECTS

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.

Graywood Group

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.

Great Gulf

357 King West Condos
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.

Kingsett Capital

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

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.

Mizrahi Developments

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

Mod Developments/Intracorp

Massey Tower, Yonge St. (Construction Only)

North American Development Group

Agincourt Mall Redevelopment

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.

Tribute Communities

The College Condo, College St.
Max Condos, Mutual St.
Parkside Square, Sheppard Ave. E.
RCMI, 426 University Ave.
The Stanley, Carlton St.

Urban Capital/Northam Realty

Kingsway on the River, Dundas St. W.



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.

ORGANIZER



BOUNDARYWISE
BOU

Is Your Real Estate Deal at Risk?

Understand Land. Protect Your Clients. Build Your Business.



PROFESSIONAL EDUCATION PROGRAM

BROUGHT TO YOU BY

PROTECT YOUR **B**OUNDARIES KRCM^{AR}

Why BoundaryWise?

The BoundaryWise™ Accredited Education Program equips real estate professionals with essential land and property boundary expertise for clean, quick and successful deals – every time.

You'll gain the knowledge and skills for fast, precise, complete assessment of land survey and title documents to smoothly close more deals while protecting everyone involved.

Understand Land

Gain clarity and certainty on the boundary, easement and title issues that can affect your sale to provide your clients with the best, most comprehensive advice. Learn how to identify and address potential issues before they become insurmountable obstacles.

Win More Listings

BoundaryWise™ accreditation marks you as a real estate professional with thorough knowledge of all aspects of a sale. You'll earn trust and confidence, building your reputation and your career through greater accountability, transparency and professionalism.

Seal The Deal Faster

Boundary or title issues can stall or kill a transaction. BoundaryWise™ equips you with a high-potency skill set to ensure a smooth, efficient process and happy conclusion.

Reduce Your Risk

Boundary, easement and title issues are like landmines lurking just under the surface. BoundaryWise™ accreditation and tools remove the guesswork about the land below the house, providing the information and assurance you need for bulletproof, compliant listings.

Plus, you'll get:

- Premium access to Protect Your Boundaries' Buyer's and Seller's Reports
- Your profile + property listings in the BoundaryWise™ database, linking to your site for improved SEO to help homebuyers and sellers to find you
- BoundaryWise™ marketing collateral for your business card and website
- Our BoundaryWise™ email newsletter, chock-full of tips, advice and industry information

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**
You'll learn how to know if there's an easement on a property, how to find out what the easement is about, and how it affects the use of the land. You'll get direct access to the official documentation that forms the basis of your disclosure, and learn the key document set that will protect your buyers, sellers and, of course, you.
- 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.

For more information and to register:
boundarywise.ca/accreditation    

THE WESTLAKE

Canada's first Boutique Hotel centered around the Airbnb concept. Newly renovated historic brick and beam architecture, designed with upscale furniture and tailored for the modern traveler. Smart technology with flexible keyless entry. Stunning views of Lake Ontario and Downtown Toronto from the nearby Great Lakes Waterfront Trails.

Originally known as the New Toronto Hotel in the 1920s, TheWestLake Hotel revitalizes modern design and superior finishes in an original historic brick and beam structure, totally gutted and finely re-constructed in 2018.

Featuring eleven timeless, superbly crafted, and individually-inspired designer rooms, well-equipped and thoughtfully finished for the modern traveler.

Smart Check-in Technology | Free WIFI | Smart TV | Netflix | Super-comfy Beds Kitchens | and much more!

Venu at The Westlake provides a sophisticated atmosphere fitting for any type of event. We are dedicated to helping create a memorable experience that will last a life time.

Our wedding and events coordination services are designed to make this process as smooth as can be. Our clients can rest assured that they are in good hands!

Arrange a commitment free appointment to discuss the details of your dream wedding day or special event with us at The Westlake.

ACCOMMODATION PARTNER



THE WESTLAKE

THE WESTLAKE
BOUTIQUE HOTEL

EVENT & ENTERTAINMENT
VENUE





#thewestlakehotel



THE WESTLAKE



THE WESTLAKE

THE WESTLAKE

A DISTINCT COLLECTION OF ELEVEN DESIGNER SUITES... [BOOK THE ENTIRE HOTEL](#) FOR YOUR NEXT EVENT!

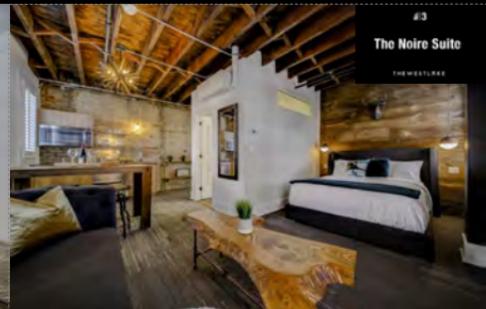
#1
The Prince of
Wales Suite
THE WESTLAKE



#2
The Netflix &
Chill Suite
THE WESTLAKE



#3
The Noire Suite
THE WESTLAKE



#4
The Bad and
Boujee Suite
THE WESTLAKE



"Voted one of the *coolest hotels in the world...*
right here in the *6IX!*"

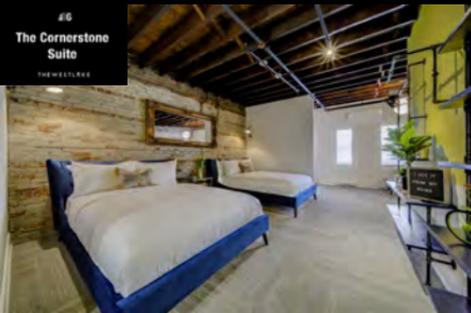
THE WESTLAKE
-TORONTO-

#EPICHOTELS

#5
The Neverly
Hills Suite
THE WESTLAKE



#6
The Cornerstone
Suite
THE WESTLAKE



#7
The Modern
Renaissance
Suite
THE WESTLAKE



#8
The Soho Suite
THE WESTLAKE



#19

The Layover Suite

THE WESTLAKE



#1VIP

The Bye, Felicia Suite

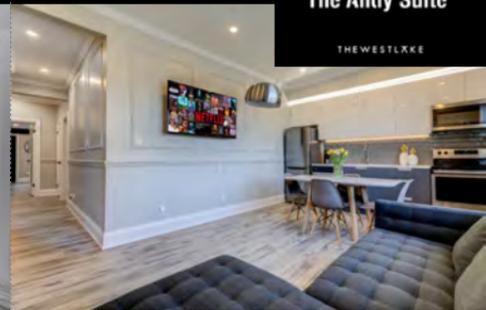
THE WESTLAKE



#1VIP

The Andy Suite

THE WESTLAKE



HELLO,
MARILYN?



THE ICONIC
#REDPHONEBOOTH

BOOK YOUR NEXT EVENT AT...

THE WESTLAKE -TORONTO-



THE WESTLAKE HOTEL
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OMG,
THE VIEWS!



THE WESTLAKE HOTEL IS LOCATED ON THE GREAT LAKES WATERFRONT TRAIL
OVER 500 ACRES OF WATERFRONT PARKS, TRAILS, BEACHES AND SCENIC VIEWS NEARBY



#NATURE IN
#THESIX

#princeofwalespark



#colonelsamuelsmithpark

#EPICVIEWS



#rotarypeacepark





THERE'S
NO
PARTY

BOOK THE BOUTIQUE HOTEL VENUE



LIKE A
WESTLAKE
PARTY



WEDDINGS - CORPORATE - PRIVATE EVENTS - FILM - MUSIC - ART & MORE





Zeifmans is a full-service tax, accounting and consulting firm based in Toronto, Canada, ranked as one of Canada's top 20 accounting firms by revenue. Beyond the traditional offering, our services include business advisory, valuation, corporate finance, transaction services, corporate turnaround and insolvency, and estate and succession planning, supporting our 9,000+ clients through every step of the business life cycle.

Since 1959, Zeifmans has been developing innovative solutions driven by creative insight. Over 60 years later, our diverse local team has grown to over 150 team members, while our membership with Nexia International – one of the world's top ten accounting and consulting networks – provides access to a global team of 3,400+ partners spanning more than 120 countries. Over 4,000 of our clients are private companies – many having been with us for more than a generation; proof that our connection with our clients remains a trusted long-term relationship based on the common goal of business growth and success.

Our real estate experts provide builders, contractors, developers, managers and passive investors throughout North America with financial management, compliance and tax planning solutions that add to their bottom line. We help our clients create efficient business strategies so they can keep their energies focused on opportunities and growth.

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.

PLATINUM SPONSOR

Zeifmans
Ideas with impact



ABOUT US

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.

Since 1959, Zeifmans has been developing innovative financial, tax and accounting solutions driven by creative insight. Over 60 years later, we remain entrepreneurial, and so we naturally have a comprehensive understanding of the needs of owner-operated and family-run businesses. We advise over 9,000 clients year after year – over 4,000 being private companies – as those businesses continue to grow and prosper with our support. As a matter of fact, hundreds of our clients have been with us for more than a generation. Why? Because our connection with you, our client, is a trusted long-term relationship based on the common goal of helping your business grow and profit.

THE PERFECT FIT

Big business expertise, delivered with the intimacy of a small business team

Even though our team has grown to over 150 individuals servicing thousands of clients, we still maintain the small business intimacy and entrepreneurial spirit that got us started. You'll benefit from the right sized team for all your needs. Our partners draw on their combined hundreds of years of experience to provide consulting, assurance, compliance and tax services supported by their diversely skilled team members. So not only will you benefit from the experience and judgement of our senior leaders, but also from the sharp, innovative thinking of our young associates.

GLOBALY CONNECTED

Your access pass to the best of all worlds

Zeifmans offers you the benefit of access to a global network of accounting and consulting professionals as a member of Nexia International – one of the top ten global networks of accounting and consulting firms.² For over 25 years, Nexia International has ensured that all member firms meet and maintain high quality control standards. Meaning, we can partner with our affiliate Nexia firms operating in more than 122 countries around the world, allowing us to support you in achieving growth across multiple markets.

ZEIFMANS
BY THE
NUMBERS*



One of the
TOP 20
largest Canadian
firms ranked
by revenue¹



18 Local
Partners/Principals



150+
local team
members



9,000+
clients



700+ offices
around the world

NEXIA BY THE
NUMBERS*



Ranked
TOP 10
largest global network
of independent accounting
and consulting firms²



3,400+
global partners



Globally connected
120+ countries

A ONE-STOP FIRM

We do it all

While Zeifmans operates with an entrepreneurial spirit, we are a full service, one-stop firm where you will benefit from the wide range of services available as your company grows and matures. Ranked one of the top 20 largest Canadian accounting firms by revenue in Canada¹, we have numerous professionals that can help you with, traditional consulting, tax, audit and accounting services, and more.

Wealth Management

US Personal and
Corporate Taxation

Cross Border Tax Planning

Mergers & Acquisitions,
Corporate Finance and Valuation

Succession and Estate Planning

International Business
including Israeli Companies

Going Public

Audits of Public Companies³,
Hedge Funds, including Cayman
Islands⁴, Pension Funds and
Investment Dealers⁵

Corporate Turnaround,
Recovery and Insolvency

Estates, Trusts and
Estate Trustee During
Litigation (ETDL)



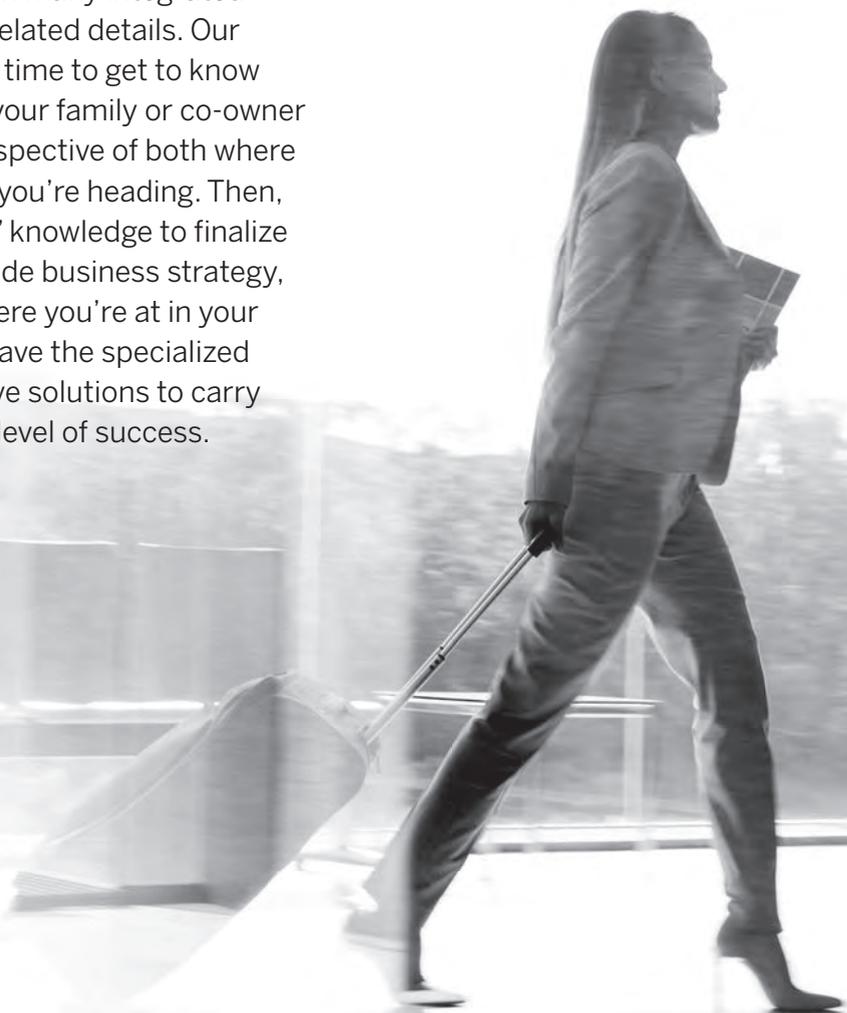
Though our team has a great deal of specialized knowledge, we are anything but a niche firm. Over the years, we've proudly amassed experience across a number of different markets throughout the globe, enabling us to provide world-class advice in several different areas, including but not limited to the following:

- Real Estate
- Distribution
- High Net Worth Individuals
- Manufacturing
- Financial Services
- Retail
- Not-for-Profit and Charities
- Healthcare
- Services
- Technology & Startups
- Entertainers, Athletes and Sports Teams
- Cannabis

PERSONALIZED INSIGHT

Custom built solutions that
achieve your business goals

We understand that each of our clients is unique, and that each financial decision needs to take into consideration many integrated personal and business-related details. Our team members take the time to get to know you, your business and your family or co-owner situation – from the perspective of both where you’ve been, and where you’re heading. Then, we use that “big picture” knowledge to finalize the details of a tailor-made business strategy, so that regardless of where you’re at in your business’ life cycle, we have the specialized knowledge and innovative solutions to carry you through to the next level of success.



A CASE STUDY

The Zeifmans difference in real life

CLIENT CHALLENGE

A consumer products company – marketing solely through social media – experiences a rapid sales growth rate of a hundred times revenue within a month! 90% of the company's customers are located in the US and international markets, with all manufacturing and sales handled in the US, and marketing headquartered in Canada. The company was concerned about their US and Canadian tax compliance and the potential exposure to global tax rates of over 40%. The owners desired the ability to be in a tax efficient position should they wish to sell their company.

ZEIFMANS SOLUTION

- **Strategy.** We advised our client to structure their operations and business in a tax efficient manner.
- **Valuation.** We provided a valuation to support the current value of the business, which was critical to the owners.
- **Global Insight.** We leveraged our global connections through Nexia International to assist with overseas VAT and related tax issues. We also worked with transfer pricing experts to ensure that the client was compliant with international tax requirements.
- **Operations.** We assisted in the organization of international subsidiaries, and implemented a reorganization of the various entities – as a means of optimizing tax outcomes at the various taxation levels – resulting in the creation of a structure that minimized overall world-wide taxation.

ZEIFMANS IMPACT

We were able to significantly reduce our client's global tax rate. The owners retained Canadian residency for tax purposes and reduced their overall tax burden by avoiding significant US and global tax exposure. The owners were provided with a tax road map designed to avoid Canadian, US and global tax traps and maintain compliance on a go forward basis.

Connect with Zeifmans today

Allow Zeifmans to support your business in conquering new levels of success. Let's create a lasting partnership, starting today:

Call us: 416.256.4000

E-mail us: info@zeifmans.ca

Visit us: 201 Bridgeland Avenue,
Toronto, ON, M6A 1Y7



1. Zeifmans LLP is ranked 18th largest Canadian firm ranked by revenue according to The Bottom Line magazine annual ranking of accounting firms in Canada in 2016.
2. Nexia International is ranked 9th largest global network by fee income (US dollars) according to the International Accounting Bulletin Survey in 2018.
3. Zeifmans is a participant in the Canadian Public Accountability Board (CPAB) and the US Public Companies Accounting Oversight Board (PCAOB), authorizing it to audit public companies in both Canada and the US. CPAB and PCAOB are, respectively, Canada's and the US's public company auditor regulators.
4. Audits of Cayman Islands hedge funds performed by Zeifmans (Cayman).
5. Zeifmans is a panel auditor for the Investment Industry Regulatory Organization of Canada (IIROC), the national self-regulatory organization which oversees all investment dealers and trading activity in the debt and equity marketplace in Canada. Only panel auditors are authorized to audit IIROC-registered investment dealers.

* Zeifmans and Nexia by the numbers as of February, 2020.

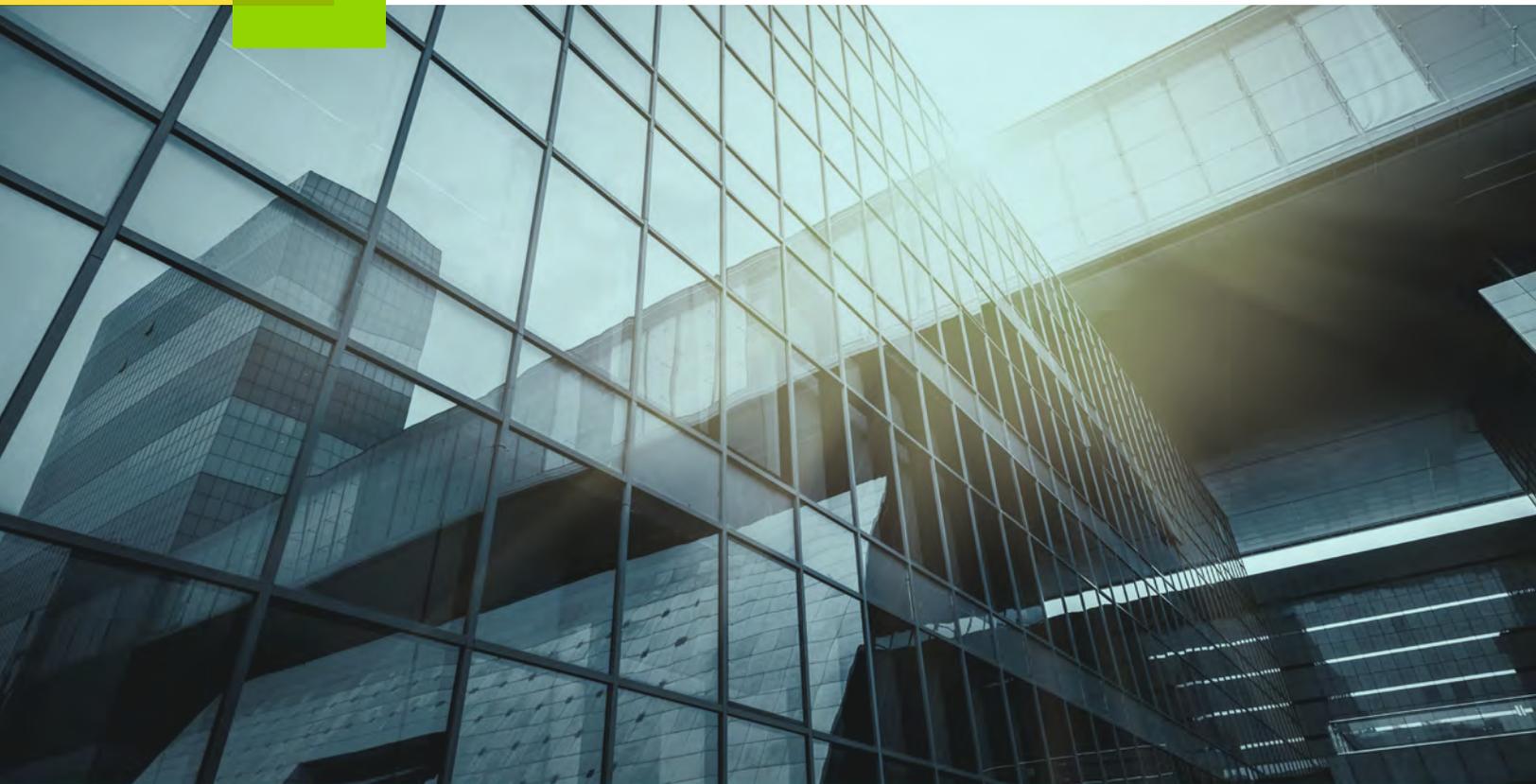
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Pros and Cons of PRECS: Realtors, listen up!

There's no denying that 2020 was a tumultuous year for real estate. We saw record vacancies and frenzied bidding wars and everything in between. If we could have foreseen the rollercoaster events of the year, perhaps the only fitting advice would have been: Hold onto your socks – this is going to be a bumpy ride.

Thankfully, Ontario has provided realtors with the opportunity to incorporate; an option that has been available to realtors in other parts of the country for many years. In incorporating as a **Personal Real Estate Corporation**, or **PREC**, the realtor stands to benefit from a number of advantages. But there are also some additional complications that need to be considered. Today, we're breaking it all down for you, to help you make the best decision for your unique business needs.



■ Qualifications

There are a number of conditions that must be met in order for a realtor to qualify as a PREC:

- Sole director acts as a controlling shareholder
- Must incorporate under the Ontario Business Corporations Act
- Controlling shareholder must be an employee of a brokerage and certified to trade in real estate
- The PREC is for one specific controlling shareholder; other businesses and investments must be managed through separate entities
- The relationship between the controlling shareholder, the brokerage, and the PREC must be laid out in a formal agreement
- The PREC cannot be a brokerage, and can only receive remuneration through the brokerage it is employed by
- PRECs cannot hold property or money belonging to clients

Does your real estate business qualify? Let's take a look at some of the advantages of incorporating.

■ Advantages

The list of “pros” for a PREC include health spending, capital gains exemption, tax deferral, and income splitting.

Corporate taxes

PRECs can take advantage of corporate tax rates. This means that where the current top marginal tax rate for individuals is over 53%, if a realtor's sole business comes from PREC income, they can lower their corporate tax rate to approximately 12%. That being said, there are instances where the tax rate can reach 26.5%, but this number is often far lower than if the income was earned personally. If the income is kept in the PREC and not distributed to shareholders, this is a massive tax advantage. Personal taxes begin to apply once corporate funds are distributed to shareholders, and thus, realtors who require all their corporate income for personal use may find that a PREC is not right for them for this reason.

Health Spending Account

PRECs can set up a Health Spending Account, or HSA. This allows them to be reimbursed for medical costs that are personally incurred. Thus, the personal tax hit is mitigated on such expenses. This applies to all the employees of the PREC, and not just the realtor.

Tax Deferral

Personal taxes do not apply, as long as funds are left in the corporation. Corporate income left in the PREC can be used for investment purposes and thus can be used to invest in bonds, debt, and stocks, as well as invested back in the PREC. Since the corporate tax rate is so much lower, more money is available to invest. If the realtor doesn't want to use the funds to invest in the PREC itself, they can create another corporation and lend that corporation the funds.

Capital gains exemptions

In the event that the PREC shares are sold, in certain situations the shareholders have access to the Capital Gains Exemption. The amount changes each year, but as of 2020 equated to \$883,384. The criteria to meet the exemption are extensive, and include not accumulating cash or non-business assets. Therefore, excess profits will need to be distributed to the shareholder to qualify for the exemption. This may offset the benefit depending on the situation.

Income splitting

The PREC can pay salaries or dividends to people other than the realtor, which opens the opportunity for income sprinkling. Marginal income tax rates can therefore be utilized. That being said, the the tax on split income (TOSI) rules will still apply, and all salaries must reflect the value of the work completed by the individuals with whom the income is split – speak to your Zeifmans advisor to learn more on how TOSI could apply to you and your business.

Insurance

PREC's allow realtors to access corporate owned life insurance, which is an excellent tool for tax savings and estate planning.

Disadvantages

Like anything, PREC's have their downfalls as well. Thus, it's important to consider the specifics of each individual realtor's business in order to determine whether incorporating is the best option. Let's take a brief look at some of the "cons" of a PREC:

Compliance and administrative cost

Given that the PREC is a corporation, there are additional compliance and administrative burdens to be taken into consideration. This means time, and in many cases

additional costs, as you will most likely require assistance from a professional service provider to help you in setting up your PREC.

Payroll and tax compliance

Taxation becomes slightly more complicated on a number of fronts, with additional payroll and HST considerations to be made.

Business losses

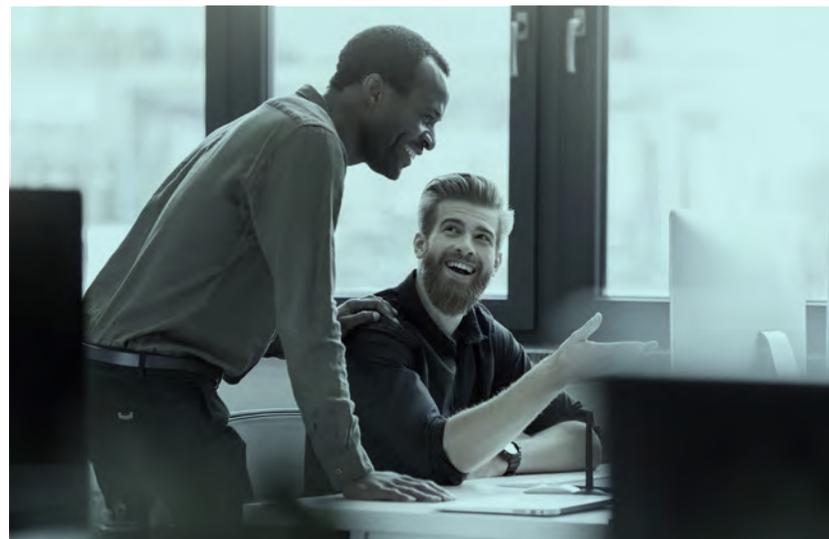
Unlike personal income tax, business losses can't be used to offset personal taxes, and instead remain trapped in the PREC. If the utilization of losses is important to one's financial situation, a PREC may not be the right choice.

Liability

In general, corporations offer limited liability for shareholders. For PREC's, personal assets are still at risk in the event of malpractice. This is because the Real Estate Council of Ontario (RECO) will still be dealing with the individual licence holder directly to handle any offences.

Real estate investment

For those realtors who invest and do business in real estate themselves, it's important to note that the PREC cannot trade in real estate, other than to provide the services of the controller to a brokerage. "Trading" includes selling, leasing, renting, and buying. So in order for the realtor to continue trading, they'll need to lend PREC funds to an additional corporation or invest personally, adding administrative steps and associated costs.





Is a PREC right for you?

As we can see, there are some definite benefits to incorporation, as well as some drawbacks. It's truly a decision to be made based on the individual details of each realtor's business. Curious if a PREC is right for you? Reach out to the team at Zeifmans for support.

To learn more, call our team today at 416.256.4000, or email us at info@zeifmans.ca.

The strategies, advice and technical content in this publication are provided for general information only. This publication is not intended to provide specific financial, tax, accounting or other advice for you, and should not be relied upon in that regard. Readers should consult with their professional advisor when planning to implement a strategy to ensure that individual circumstances have been considered properly and it is based on the latest available information.

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2172



Structuring your real estate business for RSP eligibility

Seeking potential investors? You may find an opportunity in Retirement Saving Plans (“RSPs”). Currently, real estate backed investments are a sought-after commodity, but many investors are unable to directly invest. It may not be possible for an investor with low liquid cash to, say, use funds from their RSP to directly purchase a rental property. This is because RSPs such as RRSPs, RESPs, RRIFs, RDSPs, and TFSA are limited to “qualified investments”.

RSPs are allowed to invest in shares of corporations, warrants and options, units of exchange-traded funds, and real estate investment trusts. This list extends to several real estate related structures that are considered “qualified investments” for RSPs. Let’s take a closer look at some of these additional options.

Mortgage Investment Corporations (MICs)

An MIC is a lending and investment company that is designed for primarily residential mortgage lending in Canada. When an investor owns shares in the MIC, they are invested in a company that manages a secure and diversified group of mortgages. MICs can issue preferred and common shares. These shares would be considered “qualified investments” for many Retirement Saving Plans.

An MIC gathers capital from shareholders and lends it out as mortgages- generally residential but sometimes commercial as well. Interest charges and general fees are what will provide the income on investment. By investing in an MIC, individual investors can directly invest in the Canadian mortgage market.

MICs do not pay income tax due to their corporate structure. The Canadian Income Tax Act (ITA) mandates that MICs cannot retain any earnings and must instead distribute all their earnings to investors. If MIC investment is held through RSPs, then there are no immediate taxes to be paid on these distributions.

■ Specified Small Business Corporation (SSBC)

SSBCs are Canadian corporations controlled by one or more Canadian residents, with at least 90% of fair market value of their assets are used to carry out business actively in Canada.

Qualifying active business includes any business in Canada except that which earns income from property in the form of interest, rent, dividends, royalties or gains from property dispositions. Qualifying businesses can include leasing property (other than real property), or wholesale/retail business.

The corporation must be a “Small Business Corporation” when the RSP acquires the share, or at the end of the tax year of the corporation ending prior to the time of share acquisition.

Furthermore, Investors cannot invest in an SSBC through their RRSP if they own 10% or more of any class of issued shares of that SSBC, or if they do not deal at arm’s length with that company.

SSBC are subject to taxes and can only distribute post tax profit to their shareholders.

■ Mutual Fund Trust (MFT)

MFTs are a conventional, inter vivo trust that meets certain conditions laid out in the ITA. The trust must be a unit trust resident in Canada, must meet the requirements for public distribution, and must comply with restrictions on investment. MFTs cannot issue 50% or more of the units to non-residents, and must limit activities to investment in property, whether acquiring, holding, managing, or maintaining real capital property of the trust. Trust units must be redeemable upon demand by the holder.

A MFT also needs to comply with minimum distribution requirements and must have at least 150-unit holders, each holding units of \$500 or more. No more than 10% of the trust funds can be invested in securities of any one entity other than the Crown corporations. These requirements are relatively easy to meet but do require consistent monitoring to maintain compliance.

MFTs are not subject to tax as long as they distribute all of their profit to the unitholders. This makes MFTs a very attractive investment for RSPs, due to the tax deferred nature of RSPs.

Learn more about RSP eligibility

Investment eligibility through Registered Savings Plans opens up a new stream of opportunity for real estate professionals. To ensure that your real estate business is structured to allow this type of investment, it’s wise to consult with a professional who has taxation and compliance subject matter expertise.

The team at Zeifmans has over 6 decades of experience assisting real estate professionals in growing their business and increasing their wealth.

To learn more, call our team today at 416.256.4000, or email us at info@zeifmans.ca.

The strategies, advice and technical content in this publication are provided for general information only. This publication is not intended to provide specific financial, tax, accounting or other advice for you, and should not be relied upon in that regard. Readers should consult with their professional advisor when planning to implement a strategy to ensure that individual circumstances have been considered properly and it is based on the latest available information.

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DOWNTOWN
vaughan
METROPOLITAN CENTRE

The Vaughan Metropolitan Centre (VMC) is an emerging downtown poised to be the financial, innovation and cultural centre of Vaughan.

Major corporations and thousands of new residents are choosing Downtown Vaughan because it's the perfect balance between downtown Toronto and the Greater Toronto Region. No other location offers this blend of subway and rapid bus transit with equal access to downtown and the suburbs, Class A office space, and an urban lifestyle.

As a result, this hub at Highways 400 and 407 is growing faster than expected. It's on track to meet or exceed targets for residential units, office space, and new retail space well ahead of schedule. And the pace hasn't slowed down during the pandemic. The Vaughan Metropolitan Centre is a hotbed of construction activity, and new development applications are still coming in.

To learn more, visit myVMC.ca.

GOLD SPONSOR

Downtown Vaughan is RISING

The Vaughan Metropolitan Centre (VMC) is poised to be the financial and cultural centre of Vaughan. Corporations like KPMG and PricewaterhouseCoopers are choosing the VMC because of its Class A office space, urban lifestyle, and subway and rapid bus transit with equal access to downtown and the suburbs.

This hub at Highways 400 and 407 is growing faster than expected. See it for yourself by taking the latest [360 Degree Virtual Tour!](#)

In the pipeline:


32,000
 RESIDENTIAL
 UNITS

1.6
 million ft²
 OFFICE SPACE


542,000 ft²
 RETAIL SPACE

POPULATION:
64,000
 RESIDENTS


*Includes all developments submitted to date, from pre-application to built and occupied.



	DEVELOPMENT	TYPE	SATURATION		DEVELOPMENT	TYPE	SATURATION
1	Aspen Ridge/Metrus project	Development	Partial	17	QuadReal project	Development	Partial
2	Central Park	Park	Partial	18	Ripple Developments project	Development	Partial
3	CG Tower	Development	Partial	19	SmartCentres project	Development	Partial
4	Cosmos	Development	Partial	20	SmartCentres project	Development	Partial
5	Doughton Residences Corp project	Development	Partial	21	SmartCentres project	Development	Partial
6	Edgeley Pond and Park	Park	Full	22	SmartVMC	Transit	Full
7	Expo City	Development	Full	23	The Met	Development	Full
8	Festival	Development	Partial	24	The Vincent	Development	Partial
9	Goldpark Group project	Development	Partial	25	Transit City 1-3	Development	Full
10	Icona	Development	Partial	26	Transit City 4-5 + rental building	Development	Full
11	KPMG Tower	Development	Full	27	Vaughan City Square	Development	Partial
12	Liberty Development project	Development	Partial	28	vivastation (Commerce)	Transit	Full
13	MegaVista Real Estate Development project	Development	Partial	29	vivastation (VMC)	Transit	Full
14	Mobilio	Development	Full	30	vivastation (Creditstone)	Transit	Full
15	PwC-YMCA Tower	Development	Full	31	VMC Subway Station	Transit	Full
16	QuadReal project	Development	Partial	32	Zzen Group project	Development	Partial



Teranet is Canada's leader in the delivery and transformation of statutory registry services with extensive expertise in land and commercial registries. Our innovative commercial solutions connect industry professionals and communities with reliable data, actionable insights and practice management applications – enabling them to make better decisions and improve overall efficiency.

GOLD SPONSOR

BUILDERS, DEVELOPERS, ARCHITECTS, ENGINEERS & PROPERTY MANAGERS

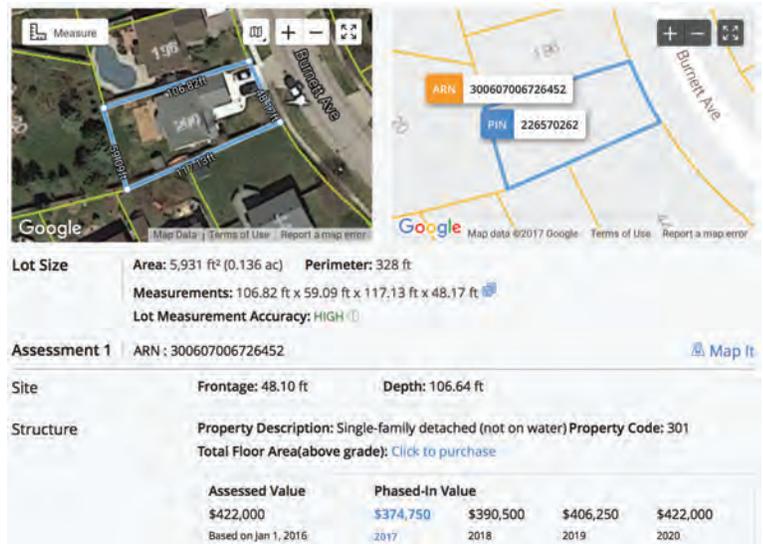
Assess Your Market

GeoWarehouse is considered the leading market insight tool for land professionals.

We help deliver the right data to builders, developers, architects, engineers, property managers and more. Access to extensive data elements means you can research and identify ownership, see the value of the land and know what others are paying in the area. It's the most complete and current research solution available.

GeoWarehouse helps you with property research and site selection:

- Confirm property ownership and legal descriptions of properties of interest and search for property purchases by other companies
- Check historical sales and encumbrances (mortgages, liens) on properties
- See property boundaries layered over aerial images, and access registered plans
- Optional assessment packages allow for in-depth searching by assessment criteria (property type, square footage, etc.)



The screenshot displays a Google Maps interface with a property boundary overlaid in blue. The property is located on Burnet Ave. The interface shows the following details:

- Lot Size:** Area: 5,931 ft² (0.136 ac), Perimeter: 328 ft
- Measurements:** 106.82 ft x 59.09 ft x 117.13 ft x 48.17 ft
- Lot Measurement Accuracy:** HIGH
- Assessment 1:** ARN: 300607006726452
- Site:** Frontage: 48.10 ft, Depth: 106.64 ft
- Structure:** Property Description: Single-family detached (not on water), Property Code: 301, Total Floor Area(above grade): [Click to purchase](#)
- Assessed Value:** \$422,000 (Based on Jan 1, 2016)
- Phased-In Value:** \$374,750 (2017), \$390,500 (2018), \$406,250 (2019), \$422,000 (2020)

“GeoWarehouse gave us access to the land-information we needed at our fingertips. Given the fast pace of market activity, we needed a tool that let us do our own research on any property in the province at any time.”

PowerStream Energy Services

Provided by **Alectra Energy Services Inc.**

PowerStream Energy Services is a subsidiary of PowerStream Holdings Inc., an electricity distribution company owned by the City of Vaughan, the City of Markham and the City of Barrie. Established in 2013, PowerStream Energy Services provides Sub-Metering services in condominiums and commercial properties throughout Canada.

Working closely with developers, condominium boards, property managers, property owners and electrical engineers to meet our customers' needs, PowerStream Energy Services provides installation, commissioning, meter certification and re-verification, ongoing maintenance, as well as billing and collection.

GOLD SPONSOR



Multi-Residential & Commercial Sub-Metering Solutions

Meter It. Manage it.

PowerStream
Energy Services

Provided by **Alectra Energy Services Inc.**



What is PowerStream Energy Services?

PowerStream Energy Services Inc. (PESI) is a subsidiary of Alectra Utilities Corporation, the largest municipally-owned LDC in Canada. With over 100 years of experience, PESI provides sub-metering services for multi-residential and commercial buildings throughout Ontario and across Canada.

PESI has the ability to sub-meter electric, water, gas, and thermal. As a premium energy services provider, PESI provides the systems and engineering expertise that turns energy opportunities into custom solutions. With an innovative and entrepreneurial way of doing business, our team delivers outstanding products and services and is committed to providing customers with safe, reliable, and efficient services.

Our Sub-Metering Services and Offerings:

- Fully-funded meter installation, **at no cost** to the developer
- A dedicated Project Manager to handle client requirements
- System Design and Project Management services
- Procurement of the metering system
- System installation & commissioning
- Ongoing maintenance on all meters

PowerStream
Energy Services

Provided by Alectra Energy Services Inc.

What Makes PowerStream Energy Services Unique?

PowerStream Energy Services assigns a dedicated Project Manager (PM) to handle client requirements for every project. The PM focuses on everything from planning, designing, and installing the metering system, to working directly with the metering system provider, right through to assisting with any questions that may arise when the units are commissioned and have begun billing. PESI commits to delivering all projects on time and budget.

PESI spends more per meter than any other sub-metering company. We only deploy high-quality water meters while other sub-metering companies use lower-quality and less reliable water meters, which often result in inaccurate readings of over or under-consumption for unit owners.

PowerStream Energy Services knows how important a Developer's brand is. Partnering with PESI will ensure owners and tenants have exceptional long-term customer service.

Energy Solutions that Set Us Apart from the Competition:

- Sub-metering options tailored to your project
- Fully-funded **electric, water, gas and thermal meters** and installation
- Full Integration with building automation systems
- Online energy-management and reporting portal for property managers and developers

PowerStream
Energy Services

Provided by **Alectra Energy Services Inc.**



Benefits for Developers and Building Owners

PowerStream Energy Services makes managing the installation of the sub-metering system in multi-unit buildings easier by providing a dedicated Project Manager that works as an extension of your team. Whether you are in the process of building a new residential or commercial building, or you are managing a condominium, rental building or commercial property, PESI is here to help you meter and manage the electricity, water, gas, and thermal usage.

Offering the following for Developers and Building Owners:

- **Electrical and Water Energy Savings:** expect up to a 20% - 30% reduction in usage because occupants are incentivized to save.
- **System Design:** fully completed design of Digital Metering System following the Electrical and Mechanical Drawings and Specifications.
- **Developer Incentives:** attractive and competitive inducements.
- **Transparent Administration Fee:** administration fee is for the billing, collecting and administration for sub-metering. **There are no hidden fees.**
- **Bulk Bill Payment:** PESI can take over the payment of the bulk hydro, water, or gas bill.
- **Management of Bad Debt:** PESI assumes the responsibility for all collections and resident bad debt.
- **Customer Service:** PESI handles customer care, billing, and collection services.
- **Reporting:** access to our online portal to track consumption and billing data.

PowerStream
Energy Services

Provided by **Alectra Energy Services Inc.**

Benefits for Unit Owners

PowerStream Energy Services makes tenants' lives easier by simplifying the sub-metering system and combining all utility services in one simple bill. Tenants, with any meter or utility issues, may contact our locally-staffed call-centre directly to have any questions answered regarding their bill.

Services Offered Directly to Tenants:

- **Consumption-Based Billing:** tenants pay only for what they use.
- **Transparent Pricing:** no markup on any rates. All local utility rates for hydro and municipal water rates for water are passed through to the unit owner.
- **Simple Billing:** multiple utility services (hydro, water, gas and thermal) on one bill.
- **Customer Portal:** ability to monitor consumption through an online portal.
- **Payment Options:** pay with a credit card, online banking, telephone banking or pre-authorized payment.
- **Exceptional Customer Experience:** locally based billing and customer service team has years of experience providing top-tier utility customer service.



PowerStream
Energy Services

Provided by Alectra Energy Services Inc.



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PowerStream
Energy Services

Provided by **Alectra Energy Services Inc.**



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



BUILDING INDUSTRY AND LAND DEVELOPMENT ASSOCIATION





THE ONLY THING MISSING IS YOU

4	Our Story
6	Membership
8	Advocacy
10	Education
14	RenoMark
16	Home Show
18	Communications

ABOUT BILD

Established in 1921, the Building Industry and Land Development Association (BILD) is the voice of the home building, residential and non-residential land development, and professional renovation industry in the Greater Toronto Area. Our industry designs, sells, and builds quality communities where people live, work, play, and shop. We are city builders.

TYPES OF MEMBERS



Builders/
Developers



Renovators



Professional
Services



Manufacturers
& Suppliers



Trade
Contractors



Financial
Services

total of
1,450+ professionals
and growing

OUR MISSION

Our mission is to enhance the health, vitality, and reputation of the home building, residential and non-residential land development, and professional renovation industries.

BUILDING COMMUNITIES

YOUR MEMBERSHIP AFFECTS CHANGE ON ISSUES LIKE...



MEETING HOUSING DEMAND



HELPING PEOPLE AFFORD HOMES



CREATING JOBS



INVESTING IN TRANSPORTATION & INFRASTRUCTURE



MUNICIPAL & PROVINCIAL PLANNING POLICIES

BUILD WITH US

MEMBERSHIP HAS ITS REWARDS

BILD is the largest home builders' association in Canada, and affiliated with the Ontario Home Builders' Association and the Canadian Home Builders' Association.

With a BILD membership, you automatically gain access to members across the country through these organizations. Our membership is open to companies with one or thousands of employees.

BILD GIVES YOU TO THE TOOLS TO SUCCEED

Our success lies in yours – we provide tools to empower our members to succeed in a variety of fields.

Access our Directory of Members of contacts to industry leaders.

Invitation to our industry networking events of over 250,000 attendees connecting you to business development opportunities.

Get the latest marketplace insight with monthly educational forums.

Get ahead in the competitive market with councils that focus on the information needs of associates, renovators, and custom builders.

Access our advertising tools to create awareness of your products and services.

Use our exclusive logos reserved for members and our membership certificate to identify your company as a recognized BILD member that adheres to the Code of Ethics.

Build your profile within the industry with membership participation and involvement.

CONNECTING YOU TO THE POLICIES AND PEOPLE THAT MATTER.

As a valued BILD member, you will:

- Access policy updates providing you with second set of eyes on policies that affect your development projects.
- Understand proposed changes and consider these changes in your current pro-forma or long-term business plans.
- Help shape the industry's position on policy matters that are of interest to you.
- Access industry data, expertise, and commentary on potential policy changes that impact the building and development industry.
- Liaise and build relationships with government officials and network with industry peers at various events.
- Contribute to the government relations advocacy, gaining insight from industry colleagues and municipal staff.
- Be provided with routine and time sensitive information updates on a variety of issues.
- Voice your concerns to BILD staff about city-wide matters that challenge the delivery of your own development projects.

WHY IS THIS IMPORTANT?

As the voice of the industry, BILD works to help shape policy, and secure positive changes on issues that impact the building and development industry.

Our government relations goal is to be your eyes and ears on the ground, to make sure our political decision-makers and key support staff recognize the importance of this industry when thinking about policy changes that affect your business, and to bring forward recommendations.

We do this by:

- Educating and equipping our political partners and municipal staff with up-to-date data and facts on the industry and its contribution to the local, provincial and national economies.
- Connecting our members to build key relationships with decision-makers and engage them in productive dialogue with government officials.
- BILD has long been regarded as the go-to resource for government officials on housing, land development and renovation issues.
- Facilitating information sharing and discussions for our members and governments at all levels, and shape legislation and policy so that it is effective for our members, new home buyers, and businesses of the GTA.

UNPARALLELED OPPORTUNITY FOR PERSONAL GROWTH

BILD offers a wide variety of member-led, cost-effective, and high-quality educational and professional development forums and events.



Our free education offerings provide information to ensure members have the knowledge and capabilities necessary to understand current business trends and changing industry regulations.



Our forums are conveniently offered at BILD and online to help members increase efficiency and productivity.



Listen to informative presentations, discuss common concerns with peers, and voice your opinion on issues.



You can volunteer in a task-oriented committee. Committee meetings draw a variety of professionals across the industry. Participating builds your profile within BILD and enhance your professional development. You gain the most from your membership by contributing to the organization.

EDUCATION & EVENTS

FORUMS, COUNCILS & COMMITTEES

4 Annual Charitable Events **40** Free Educational Forums **12+** Major Events

6,000+
attendees annually



BILD educational forums not only provide timely industry trends and information, but also help us connect with builders to deeply understand the issues they face and our role in making their communities a success.

John Amardeil
President, BAM Builder Advertising & Marketing Inc.

AWARDS AND RECOGNITION

BILD Awards
recognize members that go beyond industry standards for sales, marketing, and community development

yBILD Leadership Award
recognize the best BILD members under 40

Renovation & Custom Home Awards
recognize the best in residential renovation and custom home design

Associate Awards
celebrates suppliers, tradespeople, and service/professional firms



BILD, its networking and educational events, helps me connect to other thought leaders in the industry, build relationships, share ideas, and learn how to advocate for change by engaging in industry discussions. This inspires me as a young leader to be the best city and community builder possible.

Greg Gilbert
M.Pl, Manager, Planning & Design, Trolleybus Urban Development Inc.



RenoMark

RENOVATION, REDEFINED.

Since 2001 RenoMark™ has been raising the bar of the renovation-specific Code of Conduct. The RenoMark™ program is now delivered by 80% of the CHBA local association markets across nine provinces through voluntary, industry self-regulation.

The RenoMark™ symbol identifies professional renovator general contractors, custom builders, and trades contractors who provide installed construction services to homeowners. Only members are eligible to display the symbol.

RenoMark™ creates awareness of the renovation industry within the BILD Association, differentiating our members in the marketplace, and provides homeowners with helpful advice before hiring a contractor.

LOCAL ASSOCIATIONS CARRYING THE RENOMARK BRAND

Over a thousand renovators, trade contractors, and custom builders participate across Canada.

Toronto currently has over 260 renovators, trade contractors, and custom builders participating in the RenoMark™ program.



Membership provides a variety of marketing advantages:

- Extensive promotion of the RenoMark™ program
- Distribution of RenoGuide to homeowners
- Advertising, articles, and columns in high-profile newspapers and magazines
- Company listing on BILD websites
- Participation at BILD's home shows
- Marketing support materials for display and distribution

Home Show

A WONDERLAND OF
INSPIRATION FOR YOUR HOME.

Meet homeowners: those with projects in mind who have paid to see you, and want to buy from you.

Whether you are looking to find new customers, demonstrate a product, schedule appointments or make immediate on-site sales, participating in one of our upcoming shows delivers marketing that measures up.

TOP REASONS TO EXHIBIT WITH US



Meet your prospects live



Generate sales leads inexpensively



Create/drive brand awareness



Move your sales cycle along



Showcase products / services to consumers

BILD produces home shows throughout the Greater Toronto Area year round creating opportunities for you to engage with potential customers.



Over **250,000 attendees** at the home shows.

90%

of which are expected to be homeowners who are ready to spend more than a combined **\$1.5 billion**.

Telling the industry story.

The Communications team engages members through strategic partnerships, establishing BILD as a thought leader in the industry. They enhance the reputation of the industry by amplifying the industry's story and promote public awareness of issues that affect housing policies.

- STRATEGIC MEDIA RELATIONS**
- AUDIENCE ENGAGEMENT**
- INDUSTRY REPUTATION**
- CIVIC AWARENESS**

CHANNELS AND REACH

NEWSLETTERS

6,000+
SUBSCRIBERS
HOME PAGES / NOV 7

4,000+
SUBSCRIBERS
LIAISONS / OCT 24

SOCIAL MEDIA

14,000+
TWITTER FOLLOWERS

2,000+
FACEBOOK PAGE LIKES

1,500+
INSTAGRAM FOLLOWERS

PRINT

1,500+
TORONTO BUILDER MAGAZINE
CIRCULATION

550,000+
TORONTO STAR EVERY SATURDAY

82,000
TORONTO SUN EVERY SATURDAY

TODAY'S HOMES

RENO & DÉCOR MAGAZINE

2,000,000+
METRO NEWS PRINT & WEB

BECOME A MEMBER TODAY!

Build with us! Join the leading association dedicated to providing a voice for the industry that builds quality communities where people live, work, play, and shop.

CALL **416 391 3445**

EMAIL **MEMBERSHIP@BILDGTA.CA**



BILD[®]

Building Industry and Land Development Association
20 Upjohn Road
Suite 100
Toronto, Ontario
M3B 2V9

416-391-3445
membership@bildgta.ca
www.bildgta.ca
www.renomark.ca
www.torontohomeshows.com



3D CityScapes Inc. creates hyper-realistic, interactive digital twins for the purpose of planning, development, zoning, conceptualization, and realistic to-scale 3D visualization.

The innovative interactive digital twin technology helps planners, developers, and economic development authorities share their vision like never before.

Using AI and the latest in cloud based streaming technology, the use of sustainable 3D applications produced by 3DCS have gained worldwide recognition as the most cost effective, environmentally friendly and realistic tool that can be used to make an immediate impact for the future development of our urban environments.

Easily accessible on any device, the cloud-based streaming of 3DCS provides the ultimate experience to visualize, interact and explore anywhere in the world.

Visit www.3dcityscapes.ca to learn more about this exciting new frontier in digital innovation!

GOLD SPONSOR



3D VISUALIZATION PLATFORM
OF THE FUTURE.

STILL IMAGE FROM LIVE APPLICATION

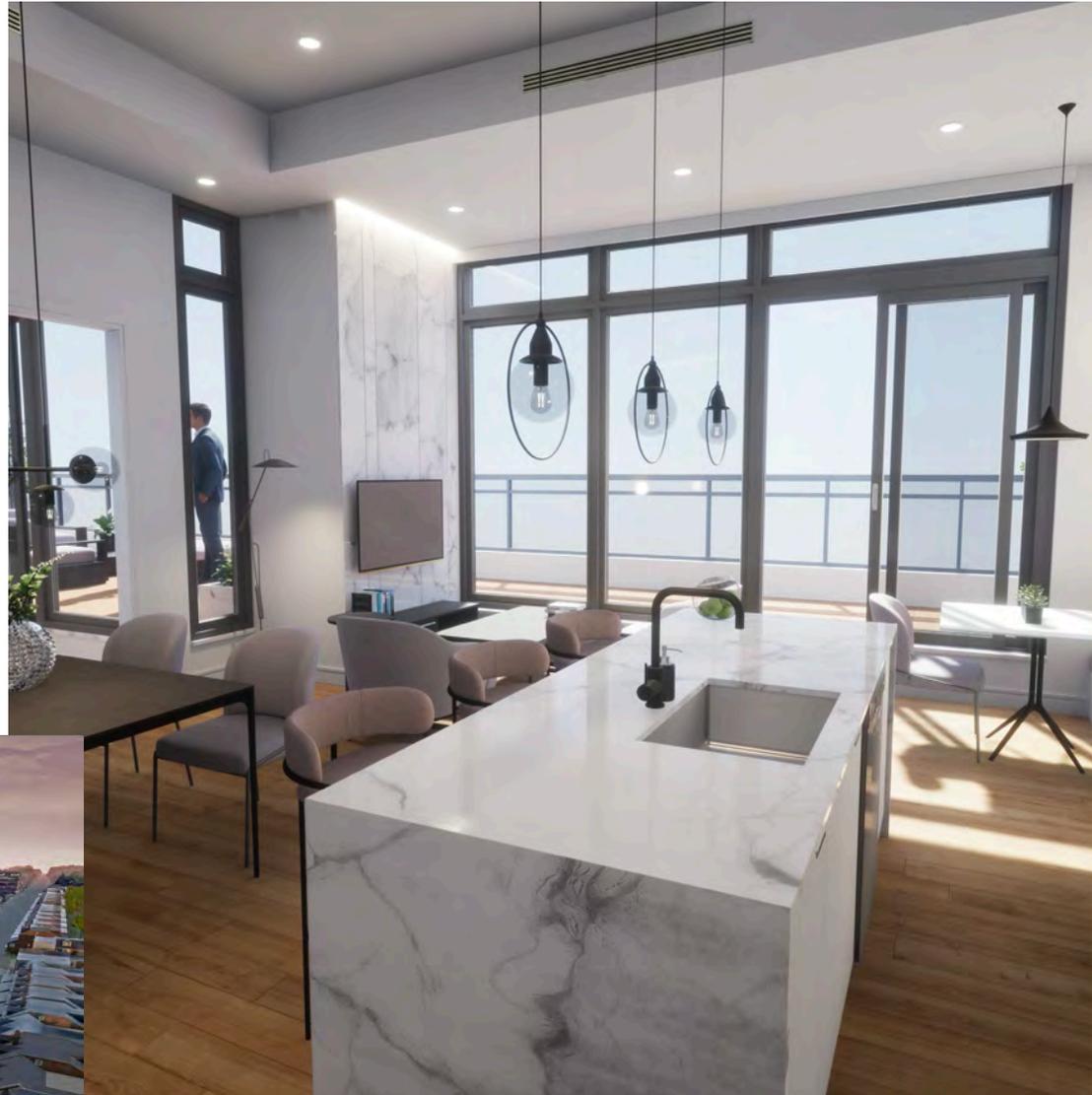
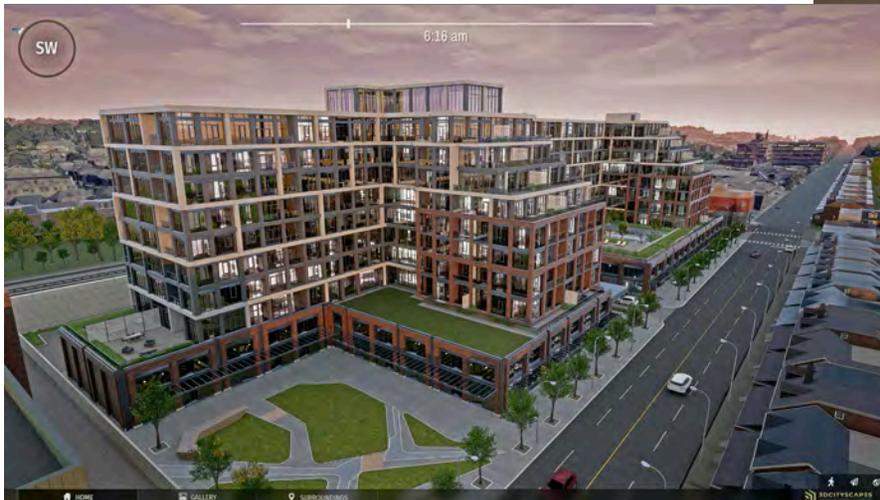




SEEING IS BELIEVING.

3D INTERACTIVE ENVIRONMENTS FOR FORWARD-THINKING DEVELOPERS

Reduce the development approval process and real estate sale cycle with a groundbreaking 3D interactive platform that allows stakeholders to explore and experience the projects **online** from anywhere in the world.



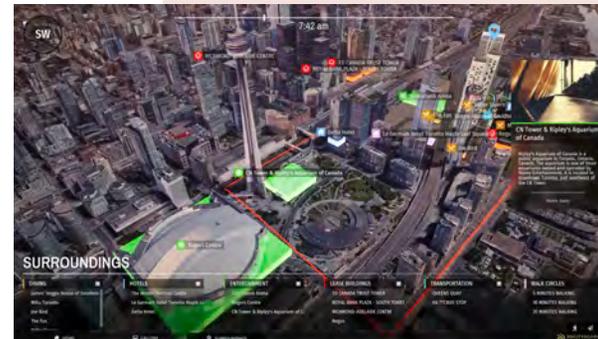
A SUPERIOR WAY TO EXPERIENCE SPACE AND STRUCTURE

Preview the building's interior, exterior, and the surrounding area and take the guesswork out of the equation during virtual and in-person consultations. All of your marketing material is in one place, easily accessible on any device with internet connection.

TAKE CONTROL.

FULL CUSTOMIZATION

Moving freely through time and space is not just a distant dream, it is a reality. Take control of the binding forces of the universe, and the laws of physics as you explore the digital twins of real cities built in the virtual world. Whether it is the time of day, season, weather, or vantage point, you are in full control of your world.



PRE-CONSTRUCTION VISUALIZATION TO MARKETING & SALES

From massing on raw land, architectural plans, landscaping, data visualization on walking score and proximity to emergency services, local attractions and amenities, sunrise and sunset from inside the unit, to custom finishes, and common areas—everything you want to communicate about a project from development and sales perspective is neatly contained within the intuitive visual application. Whether it is presenting in front of a city council, investors, or home buyers, 3D CityScapes' interactive visualization platform is a testament to your commitment to transparency, progress, and a better future.

FROM CONCEPT TO REALITY.

CONCEPT (RESORT)



BRING YOUR VISION TO LIFE

Big ideas start small. A drawing on the back of a napkin can be the basis upon which you can develop a concept. Taking it to the next level—for key-decision makers and investors—typically requires outstanding content that engage the imagination. 3D CityScapes takes advantage of the latest technology in 3D Modelling, Artificial Intelligence, and game design to take a simple sketch and turn it into a fully immersive world, waiting to be explored as if it already exists.

PRELIMINARY 3D INTERACTIVE ENVIRONMENT



Washington D.C.

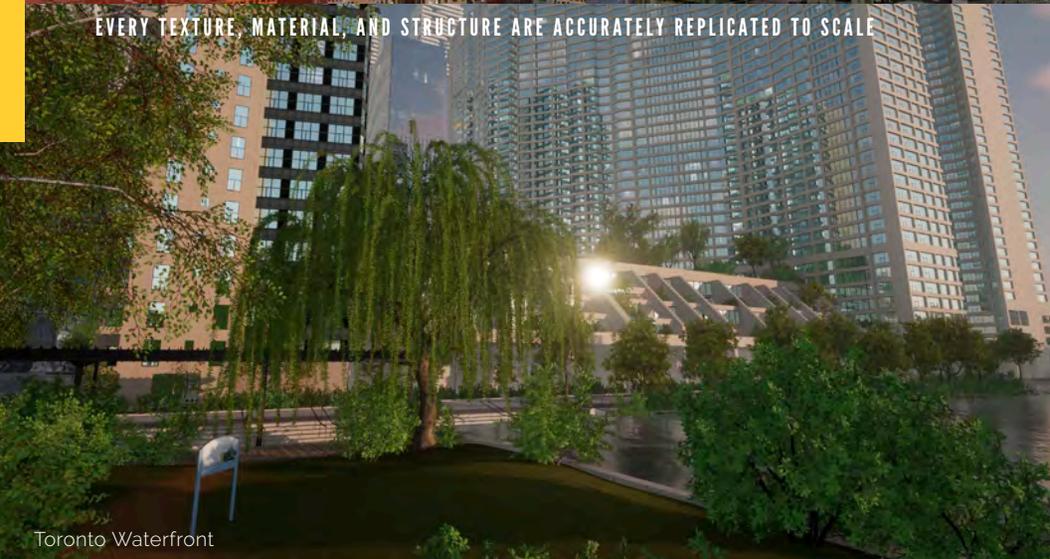


The HUB by Oxford Properties Group



DETAILS MATTER.

EVERY TEXTURE, MATERIAL, AND STRUCTURE ARE ACCURATELY REPLICATED TO SCALE



Toronto Waterfront

Local Attractions



Pre-construction Interior



Texture Detail

AVAILABLE ANYWHERE.

ACCESSIBLE FROM AROUND THE GLOBE—ON ANY DEVICE

Your computer got smaller, yet it is now running complex applications you couldn't imagine running on the most advanced computers from the past. 3D CityScapes' powerful graphics processing units (GPU) made available via strategically placed data centres takes the evolution of computers to the next level.

Now, your smallest devices can run 3D CityScapes' state-of-the-art, 3D interactive visualization platform anywhere in the world with internet connection. This means developers will no longer require meeting rooms, sales centres, or conference halls to achieve the desired results with their development projects.



A BREAKTHROUGH IN CLOUD STREAMING TECHNOLOGY

3D CityScapes' **Cloud Streaming Technology**—currently offered by big-techs like Amazon, Alibaba, IBM, and Google with expensive monthly licensing fees—was developed in-house in partnership with Arc Compute, and is projected to disrupt the cloud-streaming industry.

This technological innovation offers an **unprecedented advantage** to 3D CityScapes' clients by effectively eliminating the licensing fee—which is traditionally passed on to the end users—and by removing the need to purchase expensive and powerful computers to run the hyperrealistic 3D platform, drastically reducing the cost to a feasible level.





Raza Jafri, Founder, CEO



James Borst, Founder, COO

Get in touch

ABOUT 3D CITYSCAPES

3D CityScapes Inc. is a technology company based in Canada.

Founded in 2019, it uses industry-leading graphics engine and artificial intelligence to build visualization applications for use in Property/Land Development, Management, Real Estate, Urban Planning, and Tourism.

EMAIL

info@3dcityscapes.ca

PHONE

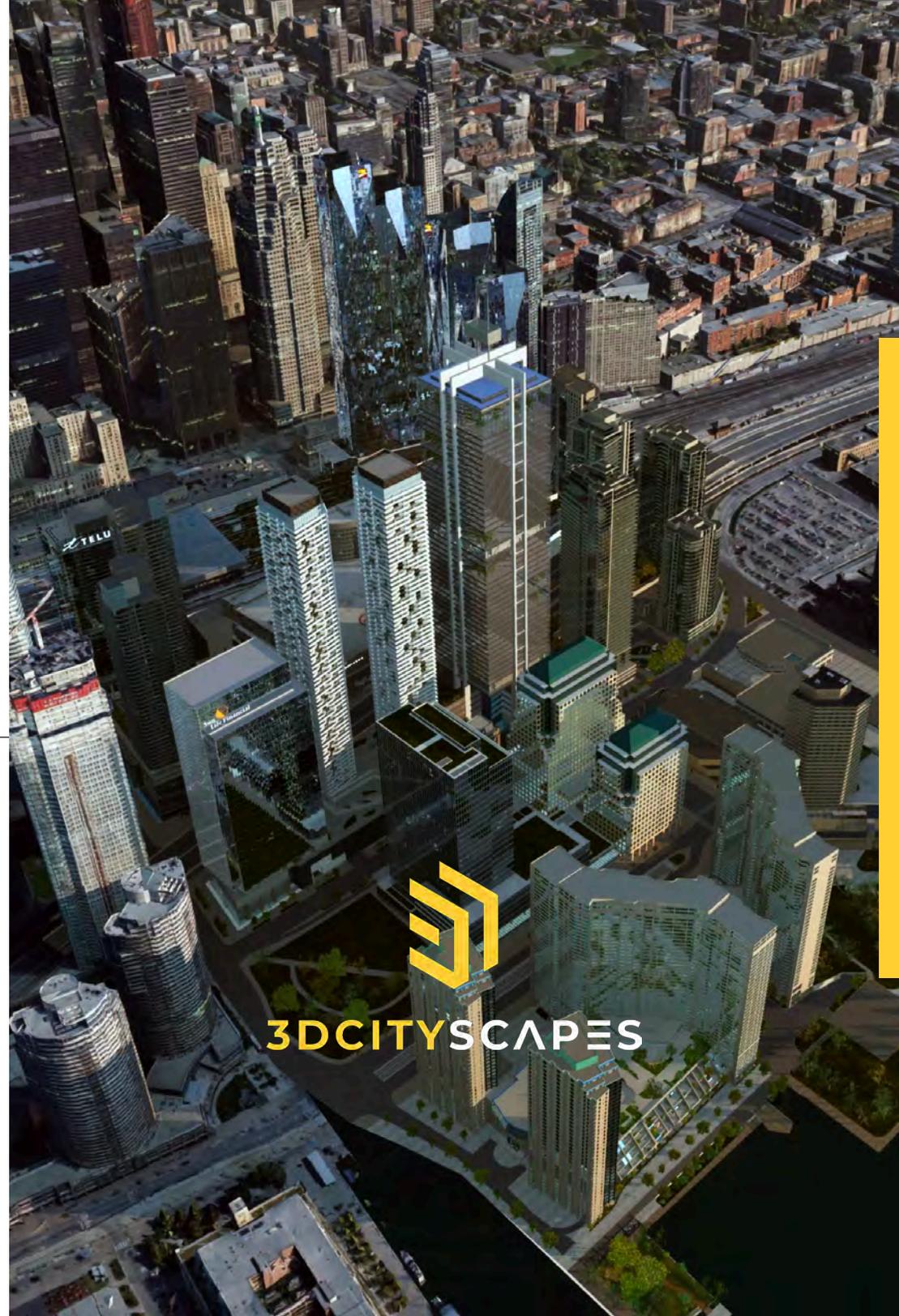
+1 416-477-6846

ADDRESS

31 Scarsdale Road #7
Toronto ON M3B 2R2

WEBSITE

<https://www.3dcityscapes.ca>





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Are you buying
a house
or condo?

Protect that asset
with TitlePLUS®
title insurance



 TitlePLUS Home Buying Guide – Canada titleplus.ca

Welcome



Locate a Lawyer

To find a real estate lawyer in your neighbourhood, visit the [Locate a Lawyer](#) section of titleplus.ca



A TitlePLUS purchase policy¹ is available through your lawyer² for a one-time premium. It includes insurance coverage for the work your lawyer does in relation to your real estate deal (legal services coverage³) and provides protection for title-related risks such as forgery, fraud, missing heirs, etc. Your TitlePLUS policy will be valid for as long as you, or your heirs, own the property.

You can get a TitlePLUS purchase policy for these types of residential properties: houses, condominiums, cottages, rural, residential rental (up to 6 units), farms^{4,5}, leaseholds⁶, and vacant land⁵.

For more information

- ask your lawyer about the benefits of TitlePLUS title insurance
- like us on [Facebook](#)
- visit titleplus.ca
- call us at 1-800-410-1013 or 416-598-5899



Cost savings

Our policy may save you money by reducing the costs that you would normally have to pay for various searches and inquiries. A TitlePLUS policy can also save you money by eliminating the need for an up-to-date survey. And, unlike other types of insurance, the premium is paid only once.

Other products

If you are refinancing your mortgage or did not get a title insurance policy at the time you bought your home, visit titleplus.ca to learn more about our [OwnerEXPRESS®](#) and [Mortgage-Only](#) products.

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¹ The TitlePLUS policy is underwritten by Lawyers' Professional Indemnity Company. Please refer to the policy for full details, including actual terms and conditions.

² Contact LAWPRO for brokers in Manitoba, Alberta and Québec.

³ Excluding OwnerEXPRESS policies and Québec policies.

⁴ Available in Ontario only.

⁵ Some restrictions may apply.

⁶ Available in Ontario and Nunavut only.

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TPHB115-002 (01/18)



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



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Melbourne Property Management, are proud to support and sponsor the 2021 LandPro Conference.

Melbourne Property Management's Industry Leading Service Offerings include:

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.
- Providing 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 projects vision and can also function as a valuable resource to help with issues or questions that may arise during the development phase.

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

Interim Occupancy Condominium Management

When opening a newly constructed community in anticipation for the first residential occupancy, there are a number of key items that need to be given special consideration, to ensure that your buyer, your customer, your purchaser's expectations are managed, and the experience they experience, 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, that can be used by both the management team and the Declarant. It's important that all parties are aligned on 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, than managing an existing community, and that additional resources, subject matter experts and experience are paramount to smoothly opening a new community, and transitioning it 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.

Meet Members from the Melbourne Property Management Team

Joff Elliot - President



Joff brings more than 15 years of sales and management experience to his position as President of Melbourne Property Management.

Prior to founding Melbourne, Joff was a principal of one of Canada's largest sub-metering companies. Joff has a proven track record in lead sourcing, developing and executing all aspects of the sales process for new construction projects. His extensive background in building businesses, leading teams and fostering meaningful relationships contributes directly to his clients' success.

He is also the founder and CEO of Benny Parks Services Inc., a provider of strategic business solutions to an ever-growing portfolio of clients in multiple business sectors across Canada. He serves on the boards of Illuminati Energy Corp and Ebene Services Inc.

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

Julian McNabb – Vice President



Julian oversees both the Operations Team and the Consulting Division, and comes with a wealth of knowledge and experience, as a well-respected member of the condominium management industry. Julian provides consultancy services to many of Ontario's top condominium developers. He is also well-known for helping, developing and training managers to ensure that they have the requisite knowledge and understanding to meet client and resident needs in this changing industry. Over the course of his career, Julian has worked on over 800 Condominium projects in Ontario.

Julian has been a frequent speaker and presenter at LandPro, Realtor Quest, BILD and CCI \ ACMO events and has served on the CCI-Toronto Chapter board of directors and on the Communications Committee.

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

Matt Newton – Vice President of Operations

Matt Newton – Vice President of Operation



Matt has an extensive background with over 15 years experience in the property management, development and real estate industry. He is responsible for overseeing the regional directors, property managers, and office operations. He is accountable for establishing and maintaining key client relationships with Board of Directors, developers, residents and office staff.

Matt's experience leading personnel development, operational strategies, and crisis management ensures optimal business performance and significant community enhancements are achieved.

Matt is also a licensed real estate agent/broker with over 15 years experience, which will greatly enhance our rental management program.

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

Yianni Eracles – Director of Consulting



Yianni comes to Melbourne Property Management with well-rounded experience, having worked in hospitality, media, promotions and over the past 6 years, in property management. In a former role as the sole property manager of a landmark condominium in Mississauga, Ontario and as a resident of a condominium himself, he understands what residents come to expect from their management provider. Yianni appreciates the importance of addressing resident concerns in a timely manner, and with communicating effectively with residents and other stakeholders.

Yianni currently works in the consulting division, providing guidance and assistance to condominium developers to ensure their visions can function operationally.

Yianni.Eracles@Melbournepm.ca 416-546-2126 ext. 104

EDUCATION PARTNERS



ASSOCIATION OF ONTARIO LAND SURVEYORS

4 Formal and 2 Professional (Meeting Attendance) hours.



ONTARIO PROFESSIONAL PLANNERS INSTITUTE

May claim hours units as per CPL handbook.



LAW SOCIETY OF ONTARIO

**Professionalism Hours: 1 hour and 40 mins.
Substantive Hours: 7 hours.**

Ontario
Association
of Architects

ONTARIO ASSOCIATION OF ARCHITECTS

Eligible for 6 Structured Learning Hours.



LANDPRO
CONFERENCE
2021

WELCOMING REMARKS:

MASTER OF CEREMONIES

8:45 A.M. - 9:00 A.M.

Chris Kamarianakis

CEO & Master of Ceremonies, Protect Your Boundaries

Ahmad Aslam

Partner, Zeifmans

OPENING REMARKS



CHRIS KAMARIANAKIS

CEO & Master of Ceremonies
Protect Your Boundaries

Role:

Master of Ceremonies

OPENING REMARKS



AHMAD ASLAM

Partner,
Zeifmans

Role:

Welcoming Remarks



LANDPRO
CONFERENCE
2021

KEYNOTE:

ECONOMIC UPDATE

9:00 A.M. - 9:45 A.M.

Ben Tal

Deputy Chief Economist
CIBC World Markets Inc.

01

SPEAKER



BEN TAL

Deputy Chief Economist,
CIBC World Markets Inc.

Keynote:

Economic Update

At LandPRO 2020 last March, 10-days before our first lockdown, Ben predicted that Coronavirus would be “bad...really bad for a year” for the global economy, and recovery would begin in earnest with widespread vaccines in 2021. 12 months later, Ben’s prophetic words have borne out and he rejoins us to share his insights and predictions for the next 12 months. With his customary flare and wit, Ben will bring the macro-topics of our time – COVID, Trade, Security and US Elections – into sharp focus for the land and development community, and as always entertain us and give us much to think about.

The Arms Race



Benjamin Tal

March 2021



0

The Three Questions

1

- How Bad is the winter ?
- How strong will the second half of the year be ?
- Any scarring ?



1

Biden Light

2



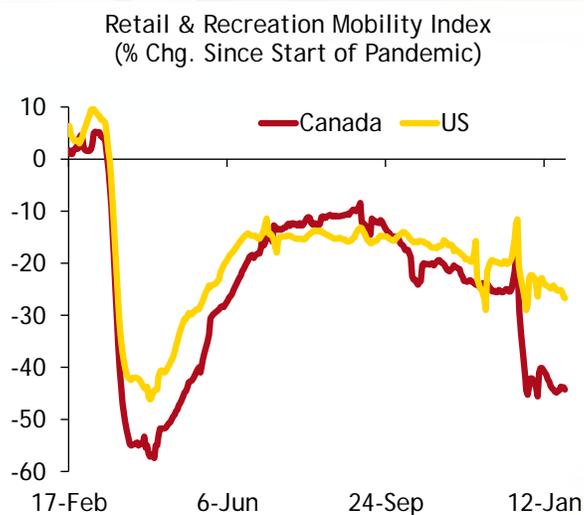
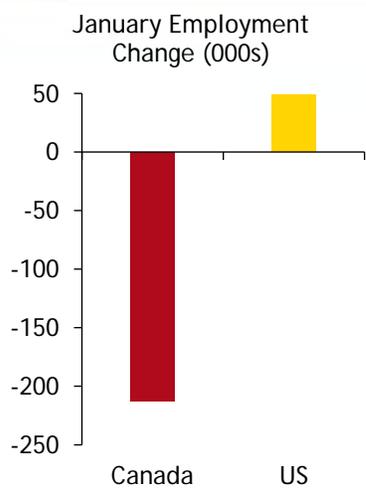
- Covid-19 plan
- Stimulus bill
- Tax Plan
- infrastructure
- Immigration
- Energy sector
- Trade Policy



2

Lives vs. Livelihood

3



Source: StatCan, BLS, OurWorldinData.org, CIBC



3

Canada: Vaccine R-R-R-ROLL-OUT

4

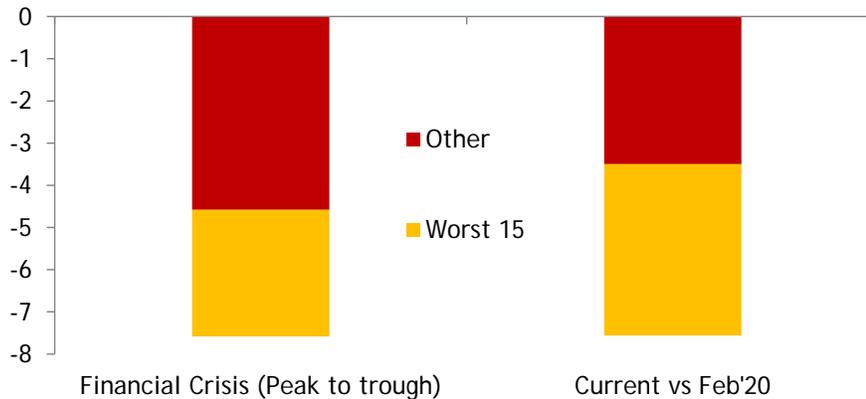


4

Very Deep But Relatively Narrow

5

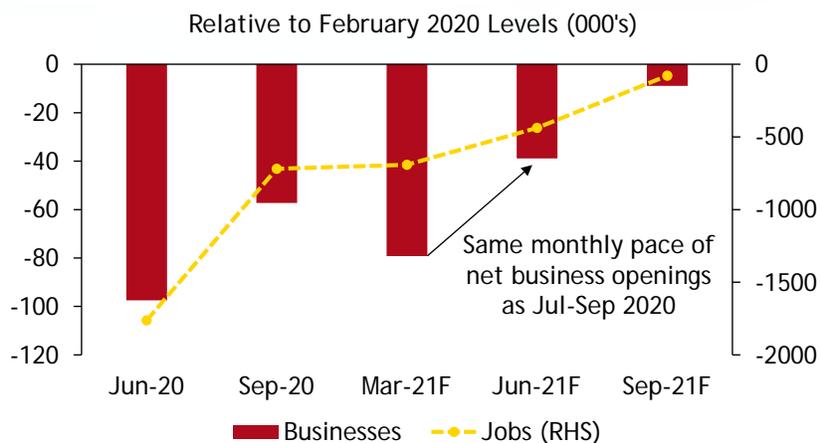
% Decline in Private Sector Payrolls
Contribution of Worst Performing 15 Sectors vs Others



5

Service Biz Recover Fast

6



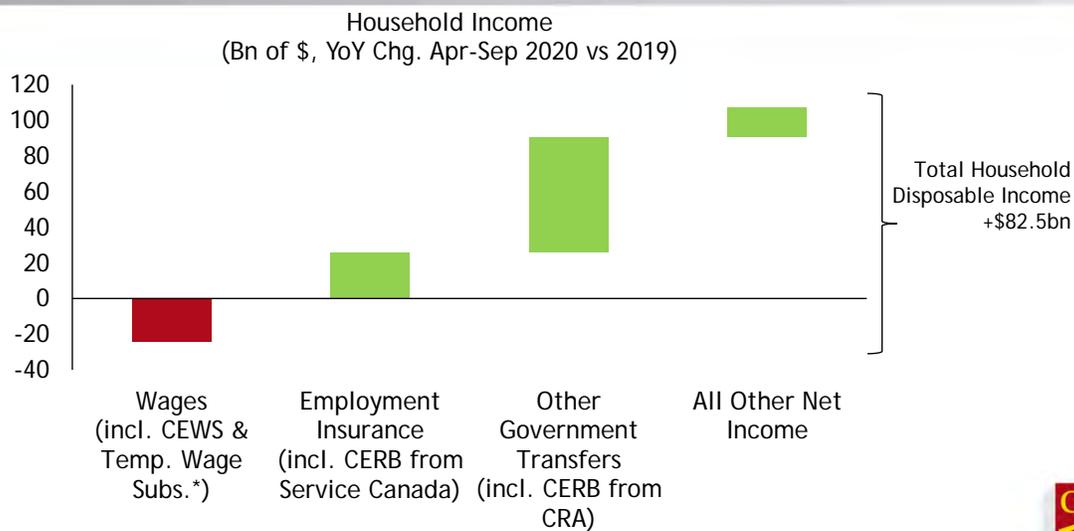
Source: Statistics Canada, CIBC



6

Incomes Well Supported

7



*Government wage support programs represented 10.4% and 5.5% of wages in the second and third quarter, respectively
Source: Statistics Canada, CIBC



7

8



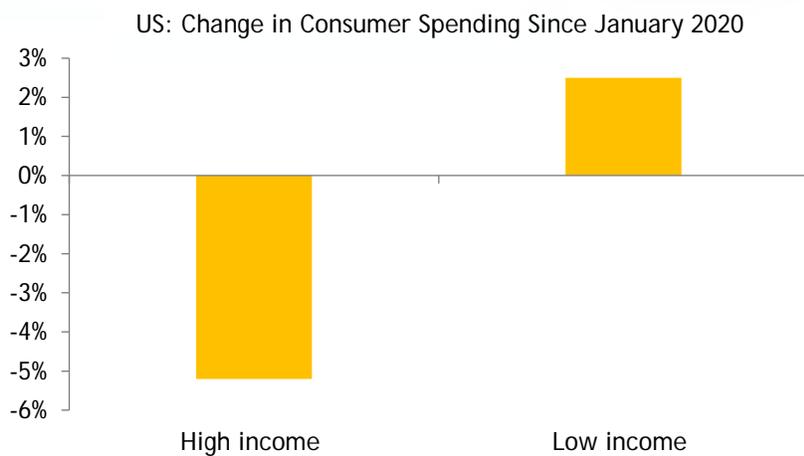
Source: Statistics Canada, CIBC



8

9

Spending Declined Mostly Among High-Income Households



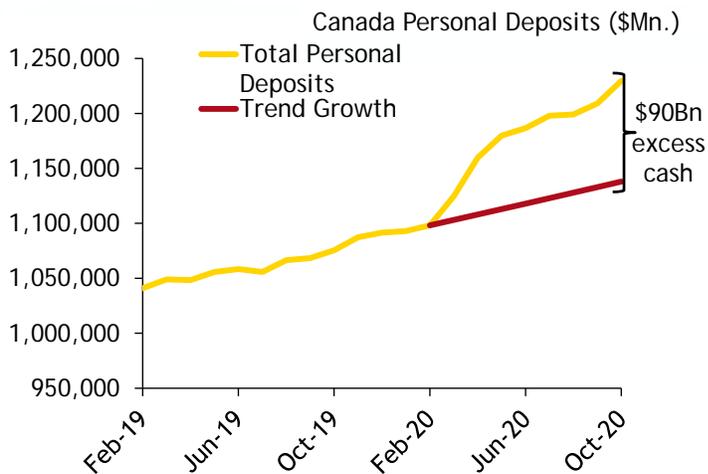
Source: Opportunity Insight, Harvard University, CIBC



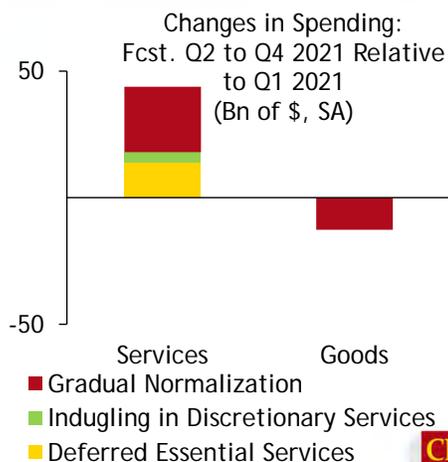
9

Canadians are Sitting On a Boatload of Cash (L) Set to Flood into Services in Q2-Q4 (R)

10



Source: OSFI, CIBC



10

Oxford Dictionary - Definition of Inflation

11

inflation

noun
/ɪnˈfleɪʃn/

[uncountable]

a general increase in the prices of services and goods in a particular country, resulting in a fall in the value of money; the rate at which this happens; *the fight against rising inflation; to control/curb inflation; to reduce/bring down inflation; a high/low rate of inflation; an inflation rate of 3%; Salary increases must be in line with inflation; Inflation is currently running at 3%; rapid/runaway/galloping inflation;*

Source: Oxford Dictionary

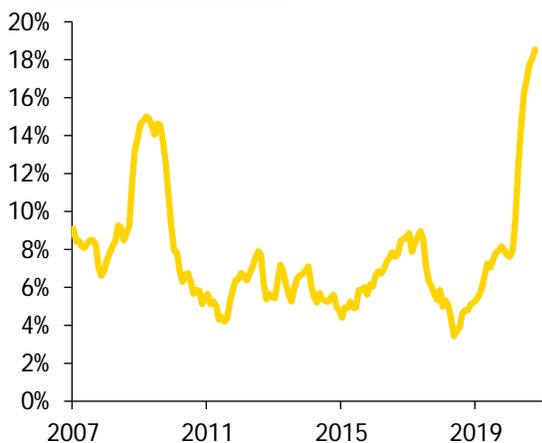


11

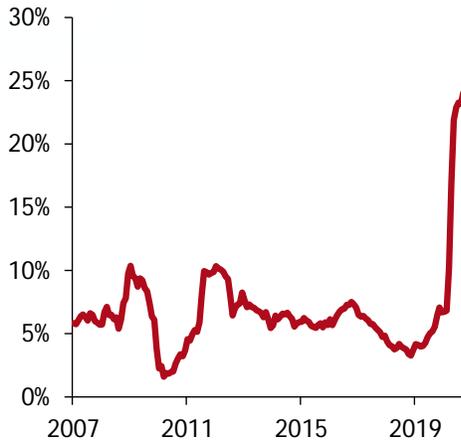
Remember When We Watched Money Supply Data?

12

Canada M2 Money Supply (Y/Y% Chg.)



US M2 Money Supply (Y/Y% Chg.)



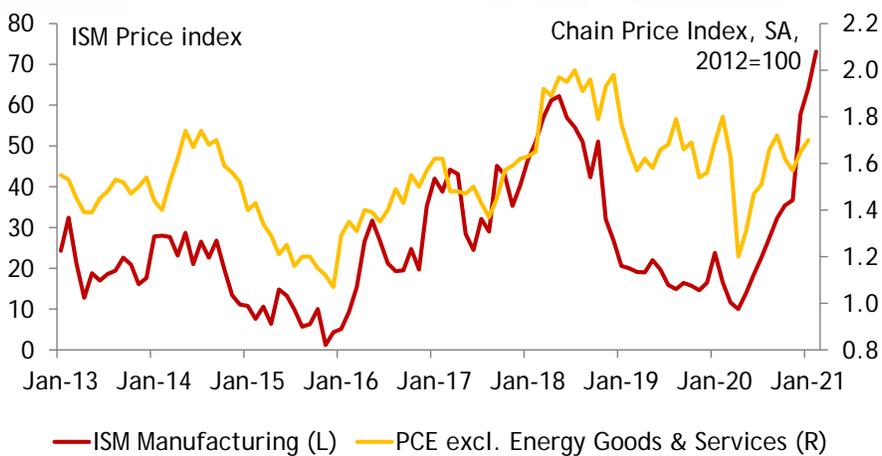
Source: FRB, BoC, CIBC



12

Core inflation Likely to Rise in Coming Months

13



Source: Institute for Supply Management, BEA, CIBC



13

Curve Control

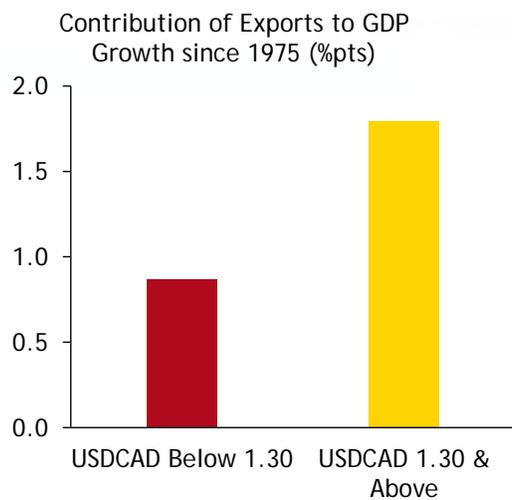
14



14

There is a Good Reason to be Concerned About A Stronger Loonie

15

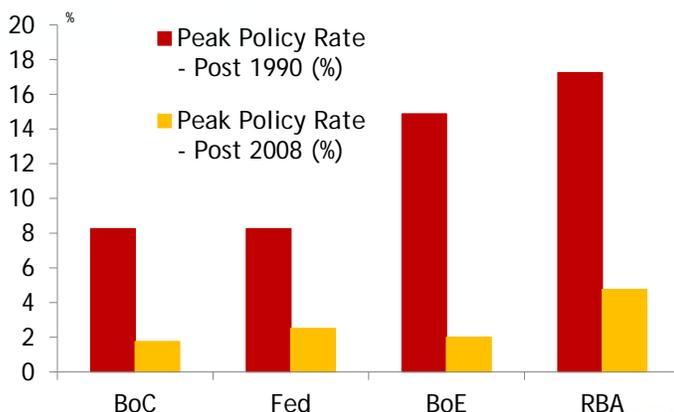
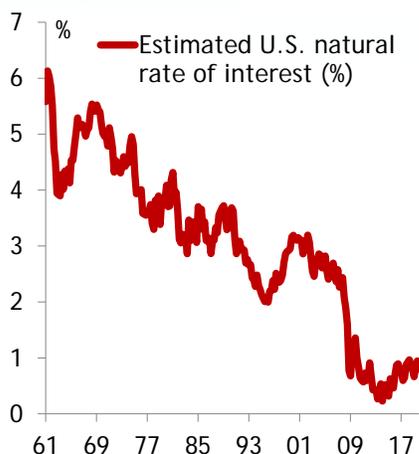


Source: Statistics Canada, CIBC



15

**Bond Sell Off Contained by Low Real Neutral Rate (L)
Nominal Peak Policy Rates are Lower These Days (R)** 16



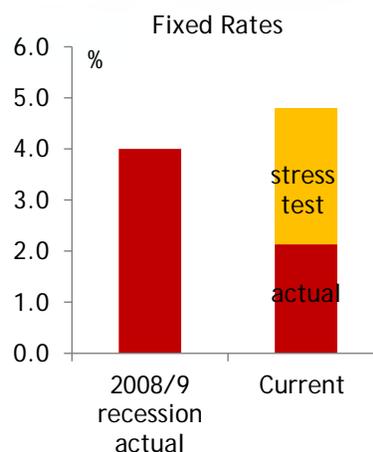
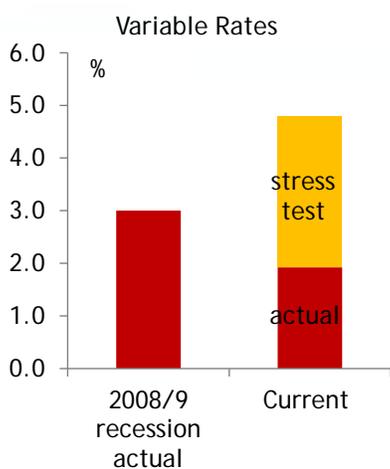
Source: Haver Analytics, CIBC Economics

Source: Federal Reserve, CIBC Capital Markets



16

Current Stress Test Requirements Bring Qualifying Rates To Higher Levels Than Seen During 2009/09 Recession 17



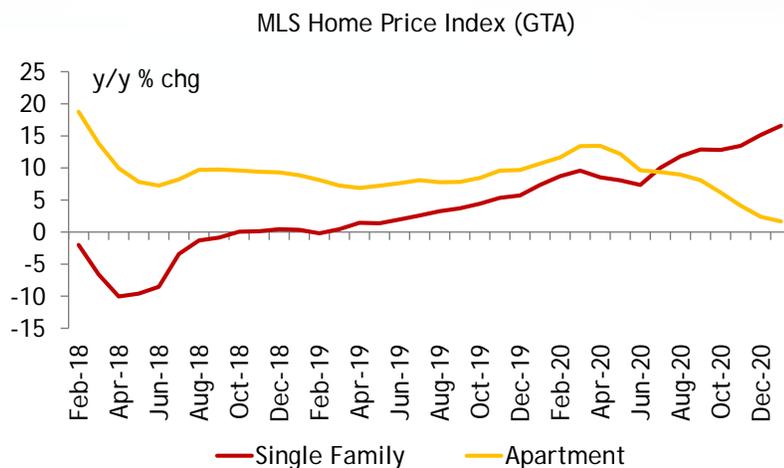
Source: Bank of Canada, CIBC



17

Low vs. High Rise: A Tale of Two Markets

18



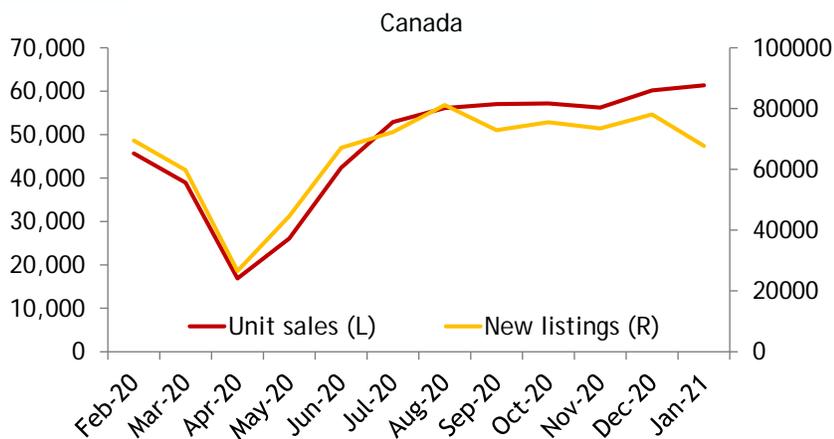
Source: CREA, CIBC



18

Resale Housing Market: Limited New Listing

19



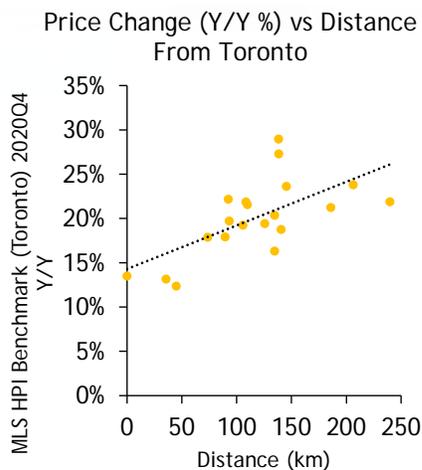
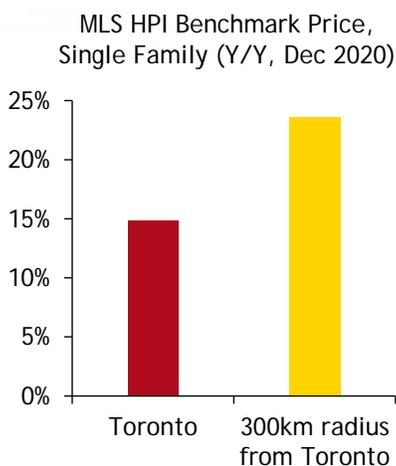
Source: CREA, CIBC



19

House Price Inflation Outside of Toronto Has Risen Faster (L); With Houses Further Away Rising Most (R)

20



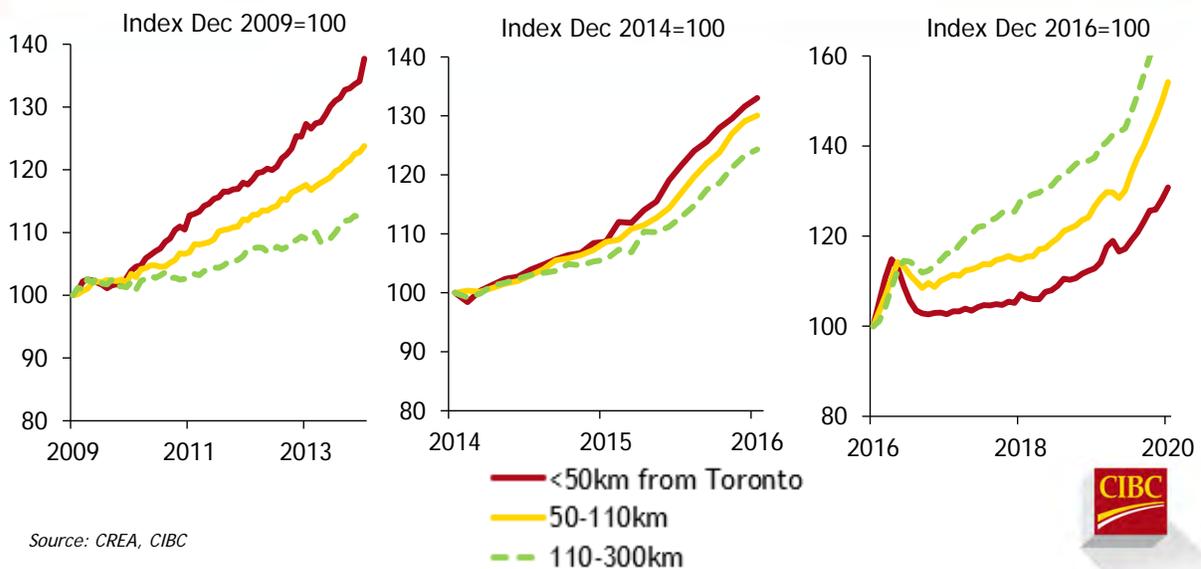
Source: CREA, www.distance.to, CIBC



20

The Evolution of Relative Price Performance

21



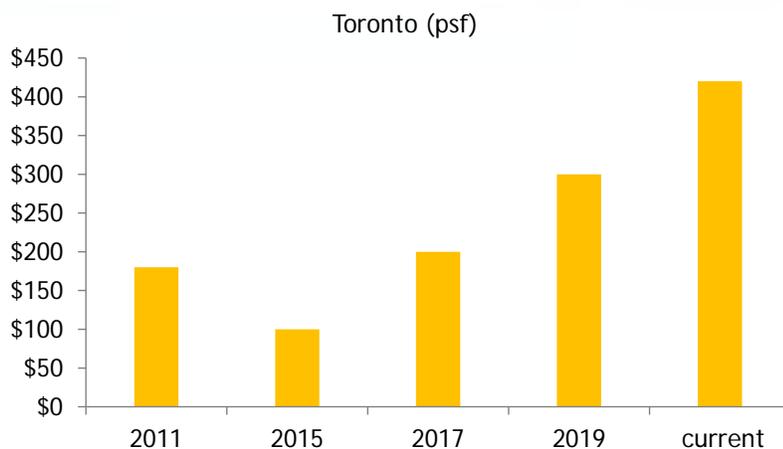
Source: CREA, CIBC



21

Gap - New vs. Resale Condo Price

22



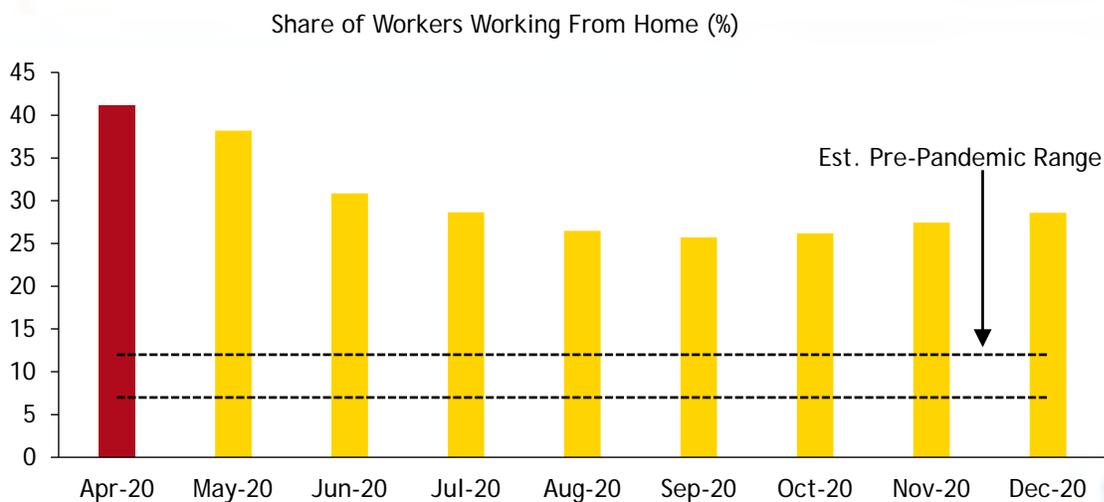
Source: Urbanation, CIBC



22

Working From Home Prevalent At the Moment

23



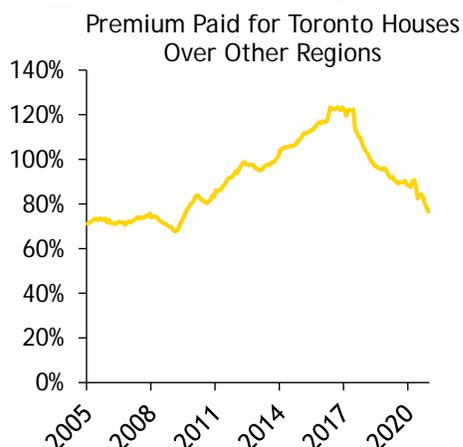
Source: Statistics Canada, CIBC



23

Narrowing Gap Between Vancouver and Locales Further Away Reached Resistance in 2016 (L); Toronto Might Be Heading This Way (R)

24



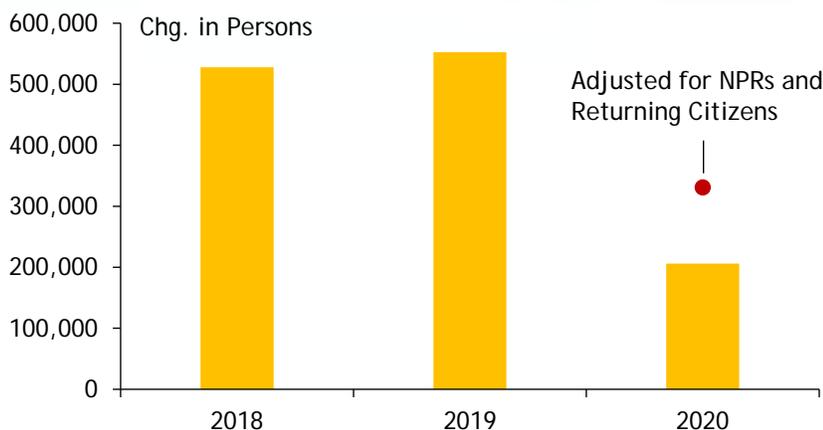
Source: CREA, CIBC



24

Population Growth Numbers Not As Bad As Feared After Adjusting For Non-Permanent Residents and Returning Citizens

25



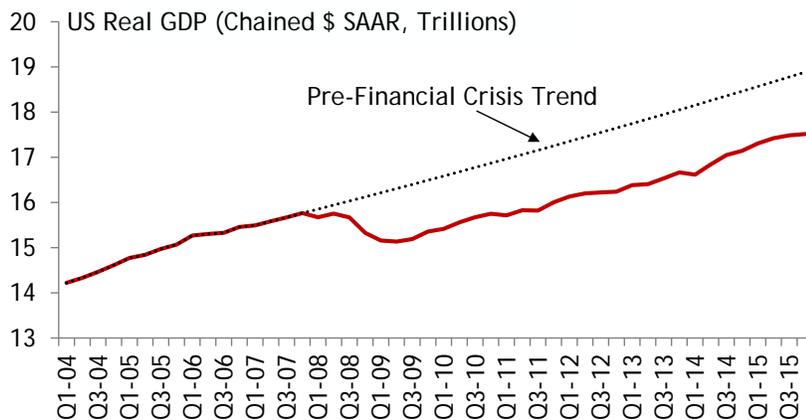
Source: Statistics Canada, CIBC



25

Scarring?

26



Source: BEA, CIBC



26

1919

27

New York



London



Toronto



27

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DISCUSSION:

THE TARION – HCRA TRANSITION, ONE MONTH IN.

9:45 A.M. - 10:30 A.M.

Joe Vaccaro, CEO, Ontario Home Builders' Association

Tim Hadwen, CEO, Home Construction Regulatory Authority

Bob Schickedanz, CEO, FarSight Homes

Peter Balasubramanian, President & CEO, Tarion

DISCUSSION MEMBERS

DISCUSSION

The Tarion – HCRA Transition, One month in.
hosted by Joe Vaccaro.



**JOE
VACCARO**

CEO
Ontario Home
Builders' Association



**TIM
HADWEN**

CEO
Home Construction
Regulatory Authority



**BOB
SCHICKEDANZ**

CEO
FarSight Homes



**PETER
BALASUBRAMANIAN**

President & CEO
Tarion



 Licensors / Regulator of Builders & Vendors	 Technical Competencies	 Code of Conduct	 Backstop the Builder Warranty	 Enrol New Homes	 Manage the Warranty Program
 Complaints Process	 Investigations	 Enforcement Tools	 Underwriting Vendors and Builders	 Risk-Based Inspections	 Dispute Resolution



LANDPRO
CONFERENCE
2021

DISCUSSION:

THE FUTURE OF OFFICE SPACE

10:45 A.M. - 11:15 A.M.

Dan Marinovic, CEO & Managing Partner, Forest Gate Financial

Annie Bergeron, Design Director and Principal, Gensler

Greg Dunn, Principal, Adamson Associates Architects

Victor Settino, VP, Development & Construction, Dream Unlimited

03

DISCUSSION MEMBERS

DISCUSSION

The Future of Office Space
hosted by Dan Marinovic.



**DAN
MARINOVIC**

CEO and
Managing Partner
Forest Gate
Financial Corp.



**ANNIE
BERGERON**

Design Director
and Principal
Gensler



**GREG
DUNN**

Principal
Adamson Associates
Architects



**VICTOR
SETTINO**

VP, Development
& Construction
Dream Unlimited



LANDPRO
CONFERENCE
2021

PANEL:

DEVELOPMENT LAW

11:15 A.M. - 12:15 P.M.

Harry Herskowitz, Senior Partner, DelZotto, Zorzi LLP

Tammy Evans, Partner, Aird & Berlis LLP

Michael Volpatti, Partner, Brattys LLP

Stephen M. Karr, Partner, Harris, Sheaffer LLP

Alex Foundos, Associate, Real Estate & Development,
DelZotto, Zorzi LLP

04

PANEL MEMBERS

DEVELOPMENT LAW PANEL

moderated by Harry Herskowitz.



**HARRY
HERSKOWITZ**

Senior Partner
DelZotto, Zorzi LLP



**TAMMY
EVANS**

Partner
Aird & Berlis LLP



**MICHAEL
VOLPATTI**

Partner
Brattys LLP



**STEPHEN M.
KARR**

Partner
Harris, Sheaffer LLP



**ALEX
FOUNDOS**

Associate, Real Estate
& Development
DelZotto, Zorzi LLP

**SUMMARY OF POINTS RAISED BY THE AUDITOR GENERAL'S REPORT
ON THE CONDOMINIUM INDUSTRY - DECEMBER, 2020**

In December 2020, the Attorney General completed a lengthy report on the condominium industry, and the following recommendations, if ultimately implemented, would dramatically impact condominium developers:

1. The AG believes that condominium documentation is becoming more and more complex and difficult for lay persons to understand. The AG's report recommends that the Ministry establish standard provisions and forms for key documents relating to the purchase of a new condominium, and specifically the agreement of purchase and sale, the declaration and the disclosure statement, and to require developers to employ same and to clearly identify where the declarant's terms and provisions, and/or forms, differ from the standard;
2. The AG's report recommends additional disclosure by developers of expected increases in the common expenses in the second year after registration (in terms of how much it will increase by, and the reasons for same), and recommends that the Ministry consider imposing penalties if developers understate the common expenses by a set percentage compared to the budget statement;
3. The AG recommends that reserve fund studies should cover a 45 to 60 year time frame for examining the cost of major repairs and replacements, instead of the current minimum of 30 years, in an effort to include most of the expensive items of a capital nature that would typically need repair or replacement beyond 30 years, and to thereby allow the cost of maintaining the condominium building to be spread out more evenly throughout the 45 to 60 year time frame, and therefore hopefully more equitably for both current owners and future owners;
4. The AG recommends that in an effort to avoid a low-balled reserve fund established by the developer in the first year budget, the Ministry should remove the provisions of section 93(5) of the Act pertaining to the reserve fund being no less than 10% of the budgeted amount required for the common expenses (exclusive of the reserve fund), and simply require that in all cases the reserve fund must be sufficient to cover the major repair and replacement of the common elements and assets of the condominium, based on their respective anticipated repair and replacement cost and life-expectancy;
5. The AG Report recommends an expanded jurisdiction for the Condominium Authority Tribunal, so that it can adjudicate and resolve disputes for a lot of key condominium-related issues, such as condo board governance and board misconduct, condo fees, reserve funds, and issues related to condominium living (such as infestation, odours and noise), as well as repairs to common areas. Furthermore, condo corporations typically retain a lawyer when appearing before the Condominium Authority Tribunal, but unit owners rarely do, presumably because of the cost of retaining legal counsel. To create a level playing field, the AG's report

recommends that the Ministry implement practices that would result in equal legal representation by both parties to the dispute, and the AG noted the protocol adopted by the British Columbia Civil Resolution Tribunal which prohibits lawyers from appearing in any dispute before the Tribunal, unless the Tribunal grants special permission because of the complexity of the issues involved;

6. The AG perceives the Ministry's enforcement powers to be weak and infrequently used, and recommends that the Ministry provide the Condominium Authority of Ontario with express inspection, investigation and enforcement powers, to look into potential offences for non-compliance with the condominium legislation and developer misconduct. It also recommends that the Ministry strengthen its powers and the penalties imposed in connection with its regulation of the condominium sector, including the power to levy administrative penalties against developers for non-compliance; and
7. Finally, the AG's report is recommending the proclamation of the amendments to the Condominium Act which were enacted in December 2015 to advance consumer protection for condominium owners, but which amendments are not yet proclaimed in force, including the following:
 - a) the mandatory requirement for a shared facility agreement whenever the condominium is involved in sharing the use and enjoyment of facilities or amenities with another party (and the corresponding requirement for an objective or stipulated cost-sharing arrangement or formula);
 - b) the prohibition on the declarant's sale or lease of property for valuable consideration to the condominium corporation;
 - c) the prohibition on exacting or imposing termination payments or any monetary penalties on condominium corporations if and when they terminate any service contracts pursuant to section 112 of the Act;
 - d) the prohibition on contractually restricting condominium corporations from suing the declarant, or pursuing any other remedies against the declarant; and
 - e) the implementation of a government-established inflation factor that will limit future budgetary increases.

2020 ONSC 3840
Ontario Superior Court of Justice

Ritchie v. Castlepoint Greybrook Sterling Inc.

2020 CarswellOnt 9094, 2020 ONSC 3840, 325 A.C.W.S. (3d) 357

**LUCIE ANNE MARIE RITCHIE, (formerly Brunet),
RAHUL JOSHI and ERIN LESLIE (Plaintiffs) and
CASTLEPOINT GREYBROOK STERLING INC. (Defendant)**

Perell J.

Heard: June 4, 2020

Judgment: June 26, 2020

Docket: CV-18-00605531-00CP

Counsel: Geoffrey D.E. Adair, Q.C., for Plaintiffs
Steve Tenai, Brian Chung, for Defendant

Subject: Civil Practice and Procedure; Contracts; Property

Related Abridgment Classifications

Construction law

II Contracts

II.6 Breach of terms of contract

II.6.m Interpretation

Headnote

Construction law --- Contracts — Breach of terms of contract — Interpretation

Developer planned to build residential condominium and pre-sold 179 units in 2015 and 2016 — Plaintiffs were purchasers who entered into pre-construction agreements of purchase and sale — Developer did not begin construction, and in late 2016 terminated agreements and returned purchasers' deposits with interest — Purchasers brought action against developer for breach of contract, alleging that developer failed to take commercially reasonable steps to satisfy financing conditions and obtain municipal approvals — Purchasers brought motion to deliver amended statement of claim, and to have action certified as class action — Developer brought motion for summary judgment dismissing purchasers' action — Purchasers' motion granted in part; developer's motion granted — Amendment of statement of claim to assert alternative theory of liability or additional remedy based on material facts already pleaded did not assert new claim for purposes of s. 4 of Limitations Act — Purchasers were granted leave to deliver amended statement of claim — Case was appropriate for summary judgment — Pursuant to exculpatory clause in agreement of purchase and sale, developer was not to be liable for any damages or costs resulting from termination of agreement — Fundamental breach argument to avoid enforcement of exculpatory provision had been rejected by Supreme Court of Canada — Developer continued to have obligations under agreement and if those obligations were breached, exculpatory clause would have provided remedy of rescission — Developer had complete defence to claim for damages, and action was dismissed.

Table of Authorities

Cases considered by Perell J.:

Ascent Inc. v. Fox 40 International Inc. (2009), 2009 CarswellOnt 4118 (Ont. S.C.J.) — referred to

B.G. Linton Construction Ltd. v. Canadian National Railway (1974), [1975] 2 S.C.R. 678, 49 D.L.R. (3d) 548, 3 N.R. 151, [1975] 3 W.W.R. 97, 1974 CarswellAlta 167, 1974 CarswellAlta 193 (S.C.C.) — considered

Bank of Montreal v. Morris (2013), 2013 ONSC 2884, 2013 CarswellOnt 9060 (Ont. S.C.J.) — referred to

Bhasin v. Hrynew (2014), 2014 SCC 71, 2014 CSC 71, 2014 CarswellAlta 2046, 2014 CarswellAlta 2047, [2014] 11 W.W.R. 641, 27 B.L.R. (5th) 1, 464 N.R. 254, 379 D.L.R. (4th) 385, 20 C.C.E.L. (4th) 1, [2014] 3 S.C.R. 494, 584 A.R. 6, 623 W.A.C. 6, 4 Alta. L.R. (6th) 219 (S.C.C.) — referred to

Birch v. Union of Taxation Employees, Local 70030 (2008), 2008 ONCA 809, 2008 CarswellOnt 7219, 93 O.R. (3d) 1, 2009 C.L.L.C. 220-006, 243 O.A.C. 6, 305 D.L.R. (4th) 64 (Ont. C.A.) — referred to

Black v. Wilcox (1976), 12 O.R. (2d) 759, 70 D.L.R. (3d) 192, 1976 CarswellOnt 844 (Ont. C.A.) — referred to

Bluestone v. Enroute Restaurants Inc. (1994), 39 R.P.R. (2d) 1, 72 O.A.C. 178, 115 D.L.R. (4th) 557, 21 M.P.L.R. (2d) 73, 18 O.R. (3d) 481, 1994 CarswellOnt 706 (Ont. C.A.) — referred to

Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd. (1997), 1997 CarswellNfld 207, 1997 CarswellNfld 208, 153 D.L.R. (4th) 385, 221 N.R. 1, 158 Nfld. & P.E.I.R. 269, 490 A.P.R. 269, [1997] 3 S.C.R. 1210, 48 C.C.L.I. (2d) 1, 37 B.L.R. (2d) 1, 40 C.C.L.T. (2d) 235, 1999 A.M.C. 108 (S.C.C.) — referred to

Braun Estate v. Zenair Ltd. (1998), 1998 CarswellOnt 4479 (Ont. C.A.) — referred to

Bruno Appliance and Furniture Inc. v. Hryniak (2014), 2014 SCC 8, 2014 CarswellOnt 642, 2014 CarswellOnt 643, 37 R.P.R. (5th) 63, 27 C.L.R. (4th) 65, 47 C.P.C. (7th) 1, 2014 CSC 8, 12 C.C.E.L. (4th) 63, 21 B.L.R. (5th) 311, 128 O.R. (3d) 799 (note), 366 D.L.R. (4th) 671, 453 N.R. 101, 314 O.A.C. 49, [2014] 1 S.C.R. 126 (S.C.C.) — considered

Caithesan v. Amjad (2016), 2016 ONSC 5720, 2016 CarswellOnt 14323, [2016] I.L.R. I-5912, 134 O.R. (3d) 150, 8 M.V.R. (7th) 169 (Ont. S.C.J.) — referred to

Campana v. Mississauga (City) (2016), 2016 ONSC 3421, 2016 CarswellOnt 8287, 55 M.P.L.R. (5th) 326 (Ont. S.C.J.) — referred to

Canada (Attorney General) v. Lameman (2008), 2008 SCC 14, 2008 CarswellAlta 398, 2008 CarswellAlta 399, 86 Alta. L.R. (4th) 1, [2008] 5 W.W.R. 195, (sub nom. *Lameman v. Canada (Attorney General)*) 372 N.R. 239, 68 R.P.R. (4th) 59, 292 D.L.R. (4th) 49, [2008] 2 C.N.L.R. 295, (sub nom. *Lameman v. Canada (Attorney General)*) 429 A.R. 26, (sub nom. *Lameman v. Canada (Attorney General)*) 421 W.A.C. 26, [2008] 1 S.C.R. 372 (S.C.C.) — referred to

Canada Steamship Lines Ltd. v. R. (1952), [1952] A.C. 192, 5 W.W.R. (N.S.) 609, [1952] 1 All E.R. 305, [1952] 2 D.L.R. 786, 1952 CarswellNat 192, [1952] 1 T.L.R. 261, 96 S.J. 72, [1952] 1 Lloyd's Rep. 1, [1952] UKPC 1 (Jud. Com. of Privy Coun.) — referred to

Carevest Capital Inc. v. North Tech Electronics Ltd. (2010), 2010 ONSC 1290, 2010 CarswellOnt 2927, 267 O.A.C. 96, 103 O.R. (3d) 231, 97 C.P.C. (6th) 98 (Ont. Div. Ct.) — referred to

Chomedy Aluminium Co. v. Belcourt Construction (Ottawa) Ltd. (1980), [1980] 2 S.C.R. 718, 15 R.P.R. 62, 13 B.L.R. 119, 116 D.L.R. (3d) 193, 33 N.R. 460, 1980 CarswellOnt 117, 1980 CarswellOnt 643 (S.C.C.) — considered

Chuang v. Toyota Canada Inc (2017), 2017 CarswellOnt 4671, 2017 CarswellOnt 4672 (S.C.C.) — referred to

Chuang v. Toyota Canada Inc. (2015), 2015 CarswellOnt 2309, 2015 ONSC 885, 40 C.L.R. (4th) 243 (Ont. S.C.J.) — referred to

Chuang v. Toyota Canada Inc. (2016), 2016 ONCA 584, 2016 CarswellOnt 11413, 351 O.A.C. 192, 403 D.L.R. (4th) 529, 57 C.L.R. (4th) 1 (Ont. C.A.) — considered

Consolidated-Bathurst Export Ltd. c. Mutual Boiler & Machinery Insurance Co. (1979), [1980] 1 S.C.R. 888, 112 D.L.R. (3d) 49, 32 N.R. 488, [1980] I.L.R. 1-1176, 1979 CarswellQue 157, 1979 CarswellQue 157F, 29 O.R. (2d) 720 (S.C.C.) — referred to

Creston Moly Corp. v. Sattva Capital Corp. (2014), 2014 SCC 53, 2014 CSC 53, 2014 CarswellBC 2267, 2014 CarswellBC 2268, 373 D.L.R. (4th) 393, 59 B.C.L.R. (5th) 1, [2014] 9 W.W.R. 427, 461 N.R. 335, 25 B.L.R. (5th) 1, 358 B.C.A.C. 1, 614 W.A.C. 1, (sub nom. *Sattva Capital Corp. v. Creston Moly Corp.*) [2014] 2 S.C.R. 633 (S.C.C.) — referred to

Dawson v. Rexcraft Storage & Warehouse Inc. (1998), 111 O.A.C. 201, 164 D.L.R. (4th) 257, 1998 CarswellOnt 3202, 20 R.P.R. (3d) 207, 26 C.P.C. (4th) 1 (Ont. C.A.) — referred to

Dee Ferraro Ltd. v. Pellizzari (2012), 2012 ONCA 55, 2012 CarswellOnt 816, 346 D.L.R. (4th) 624 (Ont. C.A.) — referred to

Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund (Trustees of) v. SNC-Lavalin Group Inc. (2016), 2016 ONSC 5784, 2016 CarswellOnt 14793 (Ont. S.C.J.) — referred to

Dugal v. Manulife Financial Corp. (2011), 2011 ONSC 1764, 2011 CarswellOnt 1890 (Ont. S.C.J.) — referred to

Dunlop Pneumatic Tyre Co. v. New Garage & Motor Co. (1914), [1915] A.C. 79, [1914] All E.R. Rep. 739, 83 L.J.K.B. 1574 (U.K. H.L.) — referred to

Gendron v. Doug C. Thompson Ltd. (Thompson Fuels) (2019), 2019 ONCA 293, 2019 CarswellOnt 5504, 24 C.E.L.R. (4th) 179, 34 C.P.C. (8th) 144, 56 C.C.L.T. (4th) 33 (Ont. C.A.) — referred to

Gendron v. Doug G. Thompson Ltd. (2016), 2016 ONSC 7056, 2016 CarswellOnt 18029 (Ont. S.C.J.) — referred to

George Weston Ltd. v. Domtar Inc. (2012), 2012 ONSC 5001, 2012 CarswellOnt 10880, 112 O.R. (3d) 190, 354 D.L.R. (4th) 121, 30 C.P.C. (7th) 252 (Ont. S.C.J. [Commercial List]) — referred to

Ghaeinizadeh (Litigation guardian of) v. Cusmariu (2015), 2015 ONSC 1953, 2015 CarswellOnt 4176 (Ont. Div. Ct.) — referred to

Ghaeinizadeh (Litigation guardian of) v. Garfinkle, Biderman LLP (2014), 2014 ONSC 4994, 2014 CarswellOnt 12614 (Ont. S.C.J.) — referred to

Greenstone (Municipality) v. Marshall Macklin Monaghan Ltd. (2013), 2013 ONSC 7058, 2013 CarswellOnt 15630, 26 C.L.R. (4th) 177 (Ont. Div. Ct.) — referred to

Guarantee Co. of North America v. Gordon Capital Corp. (1999), 1999 CarswellOnt 3171, 1999 CarswellOnt 3172, 178 D.L.R. (4th) 1, 247 N.R. 97, [2000] I.L.R. I-3741, 126 O.A.C. 1, 49 B.L.R. (2d) 68, 15 C.C.L.I. (3d) 1, [1999] 3 S.C.R. 423, 39 C.P.C. (4th) 100 (S.C.C.) — considered

Harbutt's "Plasticine" Ltd. v. Wayne Tank & Pump Co. (1969), [1970] 1 Q.B. 447, [1970] 1 All E.R. 225, [1970] 1 Lloyd's Rep. 15 (Eng. C.A.) — referred to

Harrow Karsales Ltd. v. Wallis (1956), [1956] 1 W.L.R. 936, [1956] 2 All E.R. 866 (Eng. C.A.) — referred to

Hillis Oil & Sales Ltd. v. Wynn's Canada Ltd. (1986), [1986] 1 S.C.R. 57, 25 D.L.R. (4th) 649, 65 N.R. 23, 71 N.S.R. (2d) 353, 171 A.P.R. 353, 1986 CarswellNS 147, 1986 CarswellNS 147F (S.C.C.) — referred to

Hryniak v. Mauldin (2014), 2014 CarswellOnt 640, 2014 CarswellOnt 641, 37 R.P.R. (5th) 1, 46 C.P.C. (7th) 217, 27 C.L.R. (4th) 1, 2014 CSC 7, 453 N.R. 51, 12 C.C.E.L. (4th) 1, 314 O.A.C. 1, 95 E.T.R. (3d) 1, 21 B.L.R. (5th) 248, [2014] 1 S.C.R. 87, 2014 SCC 7, 366 D.L.R. (4th) 641 (S.C.C.) — considered

Ivany v. Financiere Telco Inc. (2011), 2011 ONSC 2785, 2011 CarswellOnt 9752 (Ont. S.C.J.) — referred to

Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada (2006), 2006 SCC 21, 2006 CarswellOnt 3265, 2006 CarswellOnt 3266, [2006] I.L.R. I-4512, 36 C.C.L.I. (4th) 161, 267 D.L.R. (4th) 1, 348 N.R. 307, 80 O.R. (3d) 557 (note), 211 O.A.C. 363, [2006] 1 S.C.R. 744, [2006] R.R.A. 523 (S.C.C.) — referred to

Lavergne v. Dominion Citrus Ltd. (2014), 2014 ONSC 1836, 2014 CarswellOnt 4934 (Ont. S.C.J.) — referred to

Lo Faso and Ferracuti (2018), 2018 ONSC 6308, 2018 CarswellOnt 18306, 143 O.R. (3d) 525 (Ont. S.C.J.) — referred to

McClelland & Stewart Ltd. v. Mutual Life Assurance Co. (1981), [1981] 2 S.C.R. 6, 125 D.L.R. (3d) 257, [1981] I.L.R. 1-1393, 37 N.R. 190, 1981 CarswellOnt 624, 1981 CarswellOnt 624F (S.C.C.) — referred to

Miida Electronics Inc. v. Mitsui O.S.K. Lines Ltd. (1986), [1986] 1 S.C.R. 752, 28 D.L.R. (4th) 641, 68 N.R. 241, 34 B.L.R. 251, 1986 CarswellNat 14, 1986 CarswellNat 736, 1986 A.M.C. 2580 (S.C.C.) — referred to

Mundinger v. Mundinger (1968), [1969] 1 O.R. 606, 3 D.L.R. (3d) 338, 1968 CarswellOnt 232 (Ont. C.A.) — referred to

Mundinger v. Mundinger (1970), 14 D.L.R. (3d) 256 (note), [1970] S.C.R. vi (note), 1970 CarswellOnt 1041 (S.C.C.) — referred to

Photo Production Ltd. v. Securicor Transport Ltd. (1980), [1980] A.C. 827, [1980] 2 W.L.R. 283, [1980] 1 All E.R. 556, [1980] 1 Lloyd's Rep. 545, [1980] UKHL 2 (U.K. H.L.) — considered

Reliance Petroleum Ltd. v. Stevenson (1956), [1956] S.C.R. 936, (sub nom. *Stevenson v. Reliance Petroleum Ltd.*) 5 D.L.R. (2d) 673, 1956 CarswellOnt 83, [1956] I.L.R. 1-238 (S.C.C.) — referred to

Sanzone v. Schechter (2016), 2016 ONCA 566, 2016 CarswellOnt 10921, 402 D.L.R. (4th) 135, 92 C.P.C. (7th) 26 (Ont. C.A.) — referred to

Shelanu Inc. v. Print Three Franchising Corp. (2003), 2003 CarswellOnt 2038, 172 O.A.C. 78, 226 D.L.R. (4th) 577, 64 O.R. (3d) 533, 38 B.L.R. (3d) 42 (Ont. C.A.) — referred to

Shubaly v. Coachman Insurance (2012), 2012 ONSC 5455, 2012 CarswellOnt 13367, 112 O.R. (3d) 620, 15 C.C.L.I. (5th) 280 (Ont. S.C.J.) — referred to

Suisse Atlantique Société d'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Central (1966), [1967] 1 A.C. 361, 1 Ll. L. Rep. 529, 29 M.L.R. 546, [1966] 2 All E.R. 61, [1966] 2 W.L.R. 944 (U.K. H.L.) — considered

Syncrude Canada Ltd. v. Hunter Engineering Co. (1989), [1989] 3 W.W.R. 385, (sub nom. *Hunter Engineering Co. v. Syncrude Can. Ltd.*) [1989] 1 S.C.R. 426, (sub nom. *Hunter Engineering Co. v. Syncrude Can. Ltd.*) 57 D.L.R. (4th) 321, (sub nom. *Hunter Engineering Co. v. Syncrude Can. Ltd.*) 92 N.R. 1, (sub nom. *Hunter Engineering Co. v. Syncrude Can. Ltd.*) 35 B.C.L.R. (2d) 145, 1989 CarswellBC 37, 1989 CarswellBC 703 (S.C.C.) — considered

Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways) (2010), 2010 SCC 4, 2010 CarswellBC 296, 2010 CarswellBC 297, 100 B.C.L.R. (4th) 201, [2010] 3 W.W.R. 387, 86 C.L.R. (3d) 163, 65 B.L.R. (4th) 1, 397 N.R. 331, 315 D.L.R. (4th) 385, 281 B.C.A.C. 245, 475 W.A.C. 245, [2010] 1 S.C.R. 69 (S.C.C.) — considered

Timbers Estate v. Bank of Nova Scotia (2011), 2011 ONSC 3639, 2011 CarswellOnt 4891 (Ont. S.C.J.) — referred to

Titus v. William F. Cooke Enterprises Inc. (2007), 2007 ONCA 573, 2007 CarswellOnt 5229, 2007 C.L.L.C. 210-036, 284 D.L.R. (4th) 734, 228 O.A.C. 232, 61 C.C.E.L. (3d) 202 (Ont. C.A.) — referred to

Toronto Dominion Bank v. 466888 Ontario Ltd. (2010), 2010 ONSC 3798, 2010 CarswellOnt 4753, 103 O.R. (3d) 502 (Ont. S.C.J.) — referred to

Unique Broadband Systems Inc., Re (2014), 2014 ONCA 538, 2014 CarswellOnt 9327, 13 C.B.R. (6th) 278, 121 O.R. (3d) 81, 322 O.A.C. 122 (Ont. C.A.) — referred to

United Food and Commercial Workers Canada, Local 175, Region 6 v. Quality Meat Packers Holdings Limited (2018), 2018 ONCA 671, 2018 CarswellOnt 12270 (Ont. C.A.) — referred to

Vanzant v. Coates (1917), 40 O.L.R. 556, 39 D.L.R. 485, 1917 CarswellOnt 106 (Ont. C.A.) — referred to

Ventas Inc. v. Sunrise Senior Living Real Estate Investment Trust (2007), 2007 CarswellOnt 1705, 222 O.A.C. 102, 2007 ONCA 205, 29 B.L.R. (4th) 312, 56 R.P.R. (4th) 163, 85 O.R. (3d) 254 (Ont. C.A.) — referred to

Waters v. Donnelly (1884), 9 O.R. 391 (Ont. Div. Ct.) — referred to

Wise v. Abbott Laboratories, Ltd. (2016), 2016 ONSC 7275, 2016 CarswellOnt 18603, 34 C.C.L.T. (4th) 25 (Ont. S.C.J.) — referred to

1100997 Ontario Ltd. v. North Elgin Centre Inc. (2016), 2016 ONCA 848, 2016 CarswellOnt 17930, 409 D.L.R. (4th) 382 (Ont. C.A.) — referred to

1309489 Ontario Inc. v. BMO Bank of Montreal (2011), 2011 ONSC 5505, 2011 CarswellOnt 11618, 107 O.R. (3d) 384 (Ont. S.C.J.) — referred to

1723718 Ontario Corp. v. MacLeod (2010), 2010 ONSC 6665, 2010 CarswellOnt 9543, 100 R.P.R. (4th) 261 (Ont. S.C.J.) — referred to

Statutes considered:

Class Proceedings Act, 1992, S.O. 1992, c. 6

Generally — referred to

Condominium Act, 1998, S.O. 1998, c. 19

s. 73 — considered

s. 73(2) — considered

Limitations Act, 2002, S.O. 2002, c. 24, Sched. B

s. 4 — considered

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 20 — considered

R. 20.02(1) — considered

R. 20.04(2)(a) — considered

R. 20.04(2.1) [en. O. Reg. 438/08] — considered

R. 20.04(2.2) [en. O. Reg. 438/08] — considered

R. 20.05(1) — considered

R. 20.05(2) — considered

R. 20.05(3) — considered

Regulations considered:

Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31

Warranty for Delayed Closing or Delayed Occupancy, O. Reg. 165/08

Generally — referred to

MOTION by purchasers to deliver amended statement of claim, and to have action certified as class action; MOTION by developer for summary judgment dismissing purchasers' action.

Perell J.:

A. Introduction

1 The Defendant, Castlepoint Greybrook Sterling Inc., is a land developer, and in 2014-2016, it planned to develop a 10-storey residential condominium building known as Museum FLTS in the City of Toronto. Between 2015 and 2016, Castlepoint pre-sold 179 units. The Plaintiffs, Lucie Anne Marie Ritchie (formerly Brunet), Rahul Joshi, and Erin Leslie, respectively entered into pre-construction Agreements of Purchase and Sale. Castlepoint never began construction, and in late 2016, relying on an early termination provision in the agreements (Clauses 6 (f) and 28), Castlepoint terminated the agreements and returned the purchasers' deposits with interest.

2 On September 20, 2018, pursuant to the *Class Proceedings Act, 1992*¹, Ms. Richie, Mr. Joshi, and Ms. Leslie sued Castlepoint for breach of contract. The theory of their action is that Castlepoint failed to meet its obligations under the Agreements of Purchase and Sale to take all commercially reasonable steps to satisfy the financing condition in the agreements, including the obtaining of municipal approvals. The Plaintiffs submit that Castlepoint breached Clauses 1 (a) and 6 (f) of the Tarion Delayed Occupancy Warranty, which is a part of the Agreements of Purchase and Sale.

3 The Plaintiffs submit that the purchasers of condominium units in a dramatically rising market lost the opportunity to obtain a residential condominium at the bargained-for price. In their action, the Plaintiffs do not contest the termination of the Agreements of Purchase and Sale and they do not seek specific performance; rather, they submit that the termination of the Agreements of Purchase and Sale was a breach of contract, and they sue for damages for breach of contract.

4 The Plaintiffs submit that Castlepoint cannot rely on Clause 28 of the Agreements of Purchase and Sale, which provides that the Vendor shall not be liable for any damages or costs whatsoever incurred resulting from the termination of the Agreement including, without limiting the generality of the foregoing, relocation costs, professional fees and disbursements, opportunity costs, loss of bargain or any other damages or costs incurred by the Purchaser, directly or indirectly.

5 There are three motions before the court.

a. First, the Plaintiffs bring a motion to deliver an amended Statement of Claim with respect to the breach of contract claim. Castlepoint opposes leave being granted and it submits that a new cause of action is being pleaded after the limitation period, which is forbidden as statute barred.

b. Second, based on the original or the amended Statement of Claim, the Plaintiffs bring a motion to have their action certified as a class action.

c. Third, in response to the motion for certification, Castlepoint brings a cross-motion to have the Plaintiffs' action dismissed. Castlepoint contends that it did not breach the Agreements of Purchase and Sale, but, in any event, it submits that it is entitled to rely on Clause 28, the termination without damages clause. The Plaintiffs are suing for damages, and relying on Clause 28, Castlepoint submits it is exculpated from paying damages.

6 In the event that its summary judgment motion should fail, Castlepoint concedes that the Plaintiffs' action should be certified as a class action, but it disputes some of the proposed common issues. Thus, the preeminent issue at the heart of all three motions is the enforceability of Clause 28.

7 For the reasons that follow:

- a. I grant leave to the Plaintiffs to deliver an amended Statement of Claim.
- b. I grant Castlepoint's summary judgment motion, and
- c. I dismiss the Plaintiffs' action.
- d. Because the Plaintiffs' action is being dismissed, their certification motion is dismissed as moot.

B. Procedural Background

8 On September 20, 2018, the Plaintiffs commenced this proposed class action. The proposed class consists of each individual who entered into an Agreement of Purchase and Sale with Castlepoint for the purchase of a Museum FLTS condominium unit.

9 The Plaintiffs' Statement of Claim pleads a cause of action for breach of contract.

10 In the original Statement of Claim, the Plaintiffs allege that the Defendant breached an implied term of the Agreement of Purchase and Sale that the Defendant would act in good faith in making every reasonable commercial effort to obtain construction financing satisfactory to Castlepoint if on terms that were commercially reasonable. The Plaintiffs allege that acting in good faith, Castlepoint had available to it construction financing on reasonable commercial terms. The Plaintiffs allege that Castlepoint did not proceed in good faith.

11 In the proposed Amended Statement of Claim, the Plaintiffs submit that it was also an express and implied term of the agreements that Castlepoint act in good faith and take all reasonable steps to complete the construction to provide occupancy without delay. Further, the Plaintiffs rely on Ontario Regulation 165/08, which provides for statutory compensation for delayed occupancy of a condominium residence.

12 For the purposes of the certification motion, the Plaintiffs propose the following revised list of common issues:

1. Did Castlepoint breach its obligation under Clause 1 (a) of the Tarion Addendum to the Agreements of Purchase and Sale?
2. Did Castlepoint breach its obligations under Clause 6 (f) of the Tarion Addendum to the Agreements of Purchase and Sale? [no contest - former 3&4]
3. What is the appropriate date of the assessment of damages?
4. What is the measure of damages each class member sustained as of the date of termination of the Agreements of Purchase and Sale? [as of the appropriate date of assessment]
5. Are aggregate damages an appropriate remedy?
6. If the answer to Issue No. 5 is "Yes", then what is a fair and just quantum of aggregate damages?
7. Does Castlepoint's conduct merit an award of punitive damages?
8. If the answer to Issue No. 7 is "Yes", then what is a fair and just quantum of punitive damages?

13 In December 2019, the Plaintiffs issued their Notice of Motion for Certification. Their motion for certification was supported by the affidavit of Ms. Ritchie dated August 14, 2019.

14 In April 2020, Castlepoint delivered: (a) its Statement of Defence; (b) its composite Responding Motion Record for Certification; and (c) its Motion Record for Summary Judgment.

15 The composite Motion Record included the affidavit of Alfredo Romano dated April 20, 2020. Mr. Romano is a director of Castlepoint.

16 In May 2020, the Plaintiffs delivered their motion record for certification and responding material for the motion for summary judgment. The motion record included an affidavit from Mr. Joshi dated January 21, 2020 and an affidavit from Ms. Leslie dated January 21, 2020.

17 After January 2020, the Plaintiffs responded to written interrogatories.

- Ms. Ritchie, who was one of the real estate sales agents employed to sell the condominium units, refused to answer how many sales she was involved with as a sales agent.
- Ms. Ritchie refused to answer what she had advised some of the proposed Class Members.
- Ms. Ritchie refused to answer whether before selling Museum FLTS units, she had worked as a sales agent on three other condominium projects developed by Castlepoint.
- Ms. Ritchie and Mr. Joshi refused to answer questions about any extensions of the cooling off period beyond the statutory period.
- Each of the Plaintiffs refused to answer whether they consulted with a lawyer about the terms of the agreements before signing and whether they discussed Clause 28 with a lawyer.
- Each of the Plaintiffs refused to answer whether at the time they signed the agreement or before the expiry of the period available to them to not proceed with the agreement, they were aware that pursuant to Clause 28, if Castlepoint terminated the Agreement of Purchase and Sale, Clause 28 provided that a purchaser would be entitled to his or her deposit plus interest but would not be entitled to claim damages or costs incurred as a result of Castlepoint's termination.
- Each of the Plaintiffs refused to answer whether they had previously come across clauses in real estate agreements that excluded or limited damages in the event of termination by the vendor and, if so, to provide particulars of the clauses.
- Each of the Plaintiffs refused to answer whether they had entered other Agreements of Purchase and Sale for a pre-construction condominium, particulars of those agreements, whether those agreements had been terminated, and whether any claims for damages were pursued.

18 In May 2020, Castlepoint delivered a Supplemental Motion Record including the affidavit of Hilary Butten dated May 15, 2020. Ms. Butten is a legal assistant at Aird & Berlis LLP, the lawyers for Castlepoint.

19 The Plaintiffs brought a motion to amend the Statement of Claim that was returnable at the hearing of the other two motions, which as noted above are a certification motion and a summary judgment motion.

C. The Motion to Amend the Statement of Claim

20 A cause of action is a set of facts that entitles a person to obtain a judgment in his or her favour from a court exercising its common law, equitable or statutory jurisdiction.² A cause of action identifies a factual matrix from which claims or complaints arise and it identifies the legal nature of those claims, which is the nominal or technical meaning of a cause of action.³ In

the immediate case, Castlepoint argues that the Plaintiffs' Amended Statement of Claim raises a new cause of action after the expiry of the limitation period.

21 In the immediate case, the Plaintiffs, however, argue that the amended pleading is within the facts as originally pleaded or is just a better particularized pleading.⁴ The Plaintiffs argue that a new cause of action is not asserted if the amendment pleads an alternative claim for relief out of the same facts previously pleaded and no new facts are relied upon, or if the pleading amounts simply to different legal conclusions drawn from the same set of facts, or if the pleading simply provides particulars of an allegation already pled or additional facts upon which the original right of action is based.⁵

22 The case law supports the Plaintiffs' arguments. An amendment of a statement of claim to assert an alternative theory of liability or an additional remedy based on material facts that have already been pleaded in the statement of claim does not assert a new claim for purposes of section 4 of the *Limitations Act*.⁶ The key is whether substantially all of the material facts of the tendered cause of action have already been pleaded, in which case, the amendment will be allowed, or whether new material facts are sought to be added to support the cause of action, in which case, the amendment will not be allowed or if already pleaded, it will be struck.⁷

23 In the immediate case, I agree with the Plaintiffs' argument. I, therefore, grant leave for them to deliver the Amended Statement of Claim.

D. Facts

24 Ms. Ritchie was a sales agent with the real estate agency retained by Castlepoint to sell the Museum FLTS Condominium units. Ms. Ritchie herself signed an agreement to purchase a unit for her, along with her spouse, and a corporation controlled by her father-in-law (Ritchie Engineering Consultants Ltd.). The purchase was an investment for them.

25 Mr. Joshi is 39 years old and has been employed for over twelve years with CIBC and is currently a senior quality analyst. He is a graduate from Loyalist College with a diploma in Networking Technology.

26 Ms. Leslie is 56 years old. She is a graduate of the Ontario College of Art and Design and has been self-employed in the film production industry for many years.

27 Castlepoint owns a parcel of land located at 158 Sterling Road in the City of Toronto in the area known as the Lower Junction Triangle. In 2014-2016, Castlepoint took steps to develop one of the blocks in the parcel as a 10-storey residential condominium building known as Museum FLTS.

28 On July 6, 2015, Castlepoint through a related corporation announced the successful closing of a \$22.4 million equity private placement to be used to fund the development of a mixed-use project. On August 19, 2015, another related corporation announced that final approval has been given for Castlepoint's redevelopment of the project lands including Museum FLTS.

29 In the spring of 2016, Castlepoint began marketing the units and it entered into 179 agreements of purchase and sale. Some of the purchasers were individuals and some were institutional investors. Some of the purchasers were friends of Castlepoint employees or of the real estate agent retained by Castlepoint. Many, if not all the purchasers, were represented by legal counsel or a real estate agent in negotiating and signing the agreements of purchase and sale. Some purchasers negotiated changes to the agreements. Pursuant to s. 73 of the *Condominium Act, 1998*,⁸ all of the purchasers had had a ten-day cooling off period, or longer, to withdraw from the agreement with no penalty.

30 Castlepoint stated in each agreement that it had obtained zoning approval for the project and expected construction to start by July 7, 2017. The Tentative Occupancy date was scheduled for March 29, 2019.

31 The Agreements of Purchase and Sale included the following terms:

Paragraphs 3 through 74 and Schedules 'AA', 'A1', 'B', 'C', 'D', 'E', and as well as Tarion Warranty Corporation's Statement of Crucial Dates and Addendum to Agreement of Purchase and Sale (The "Addendum" or the "Tarion Addendum"), together with the appendix to the Addendum outlining permitted Early Termination Conditions are attached to this Agreement and form an integral part of this Agreement. The Purchaser confirm he has read and agreed to be bound by the Schedules, the Statement of Critical Dates, the Addendum, and the appendix to the Addendum outlining permitted Early Termination Conditions. [...]

[...]

6. Vendor's Condition

(1) The Purchaser acknowledges and agrees that the Vendor's obligation to complete the transaction of purchase and sale contemplated by this Agreement shall be conditional on the Vendor obtaining construction financing for the Condominium (on terms satisfactory to the Vendor) on or before 5:00 p.m. (EST) on December 28, 2018.

(2) If the Vendor decides to avail itself on this condition and terminate this transaction, then the Vendor shall give notice in writing to the Purchaser on or before the time and date specified above. In this event, the Deposit shall be returned to the Purchaser with interest (if any) and without deduction and the parties shall have no further obligations with respect to this Agreement. In the event that the Vendor does not give notice in writing to the Purchaser prior to the time and date specified above, the Vendor shall be deemed to have waived this condition. The Purchaser acknowledges that this condition is for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

[...]

28. Termination

In the event that this Agreement is terminated through no fault of the Purchaser, the Deposit shall be returned to the Purchaser (with interest, if any, calculated at the rate prescribed by the *Condominium Act*) and without deduction (except as contemplated by the Occupancy Licence). The Purchaser acknowledges that the Vendor shall not be required to return any amount paid by the Purchaser to the Vendor as Occupancy Licence Fees. The Purchaser further acknowledges that the Vendor shall not be liable for any damages or costs whatsoever incurred by the Purchaser resulting from the termination of this Agreement including, without limiting the generality of the foregoing, relocation costs, professional fees and disbursements, opportunity costs, loss of bargain or any other damages or costs incurred by the Purchaser, directly or indirectly. The Purchaser acknowledges and agrees that this provision may be pleaded by the Vendor as a complete defence to any claim which may be made by the Purchaser against the Vendor.

[...]

General

63. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.

64. Time shall be of the essence with respect to all aspects of this Agreement. This Offer when accepted by the Vendor shall constitute a binding contract of purchase and sale subject only to the expiration of the initial statutory rescission period in the Act.

65. This Offer and its acceptance (s to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.

66. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

[...]

32 Pursuant to O. Reg 165/08 (Warranty for Delayed Closing or Delayed Occupancy), s. 8. pre-construction agreements of purchase and sale are required to incorporate prescribed addendums. The Tarion Addendum terms included the following provisions:

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

(a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the Building subject to all prescribed requirements, to provide Occupancy of the home without delay, and to register without delay the declaration and description in respect of the Building.

[...]

[...]

6. EARLY TERMINATION CONDITIONS

(a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.

(b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below.

[...]

(d) The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in the appendix headed "Early Termination Conditions".

Condition #1 (if applicable)

Description of the Early Termination Condition:

The Purchase Agreement is conditional upon receipt by the Vendor of confirmation that financing for the construction of the Condominium has been arranged on terms satisfactory to the Vendor. This condition is for the benefit of the Vendor and may be waived by the Vendor in its sole discretion. The date by which this condition is to be satisfied or waived by the Vendor is noted below.

[...]

The date by which Condition #1 is to be satisfied is December 28, 2018.

[...]

(e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.

(f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.

[...]

(h) For conditions under paragraph 1(b) of Schedule A the following applies:

(i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;

(ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and

(iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.

[...]

11. Refund of Monies Paid on Termination

(a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.

(b) The rate of Interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.

(c) Notwithstanding paragraphs(a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and Interest shall be payable as determined In those proceedings.

[...]

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision In the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

[...]

SCHEDULE A

Types of Permitted Early Termination Conditions

1. The Vendor of a condominium home is permitted to make the Purchase Agreement conditional as follows:

[...]

(b) upon:

(i) receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;

(ii) receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date;

(iii) receipt of Approval from an Approving Authority for a basement walkout; and/or (iv) confirmation by the Vendor that It Is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

[...]

3. Each condition must:

(a) be set out separately;

(b) be reasonably specific as to the type of Approval which is needed for the transaction; and

(c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

[...]

33 As noted above, for the Museum FLTS's condominiums, the first tentative occupancy date was March 29, 2019 and the outside occupancy date was March 29, 2022, which is three to six years after the agreements of purchase and sale were signed.

34 As noted above, each of the purchasers of the Museum FLTS condominium units were protected by the cooling off provisions of s. 73(2) of the *Condominium Act, 1998*. Pursuant to s. 73(2), a Purchaser may rescind the agreement of purchase and sale by delivering a written notice of rescission within ten days of the later of: (a) the date that the purchaser receives the disclosure statement; and (b) the date that the purchaser receives a copy of the agreement of purchase and sale executed by the vendor.

35 In the immediate case, each purchaser signed the following Acknowledgment:

As prescribed by Section 73 of the *Condominium Act*, the Purchaser shall be entitled to rescind or terminate the Agreement of Purchase and Sale relating to the above noted property and obtain a full refund of the Deposit provided the Purchaser or the Purchaser's solicitor gives written notice of rescission to the Vendor or the Vendor's solicitor within 10 days after the later of:

the date that the Purchaser receives the Disclosure Statement; and

the date that the Purchaser receives a fully executed copy of the Agreement of Purchase and Sale, duly executed by both Purchaser and Vendor.

By executing this Acknowledgment, the Purchaser acknowledges having received both the Disclosure Statement and a fully executed copy of the Agreement of Purchase and Sale; consequently, the Purchaser's right of rescission commences on the date hereof and shall expire at 5:00 p.m. on that date which is 10 days thereafter.

36 As appears from the contract provisions set out above, Clause 28 is an exculpatory clause. Castlepoint presented evidence that Clause 28 was typical of other exclusion clauses found in the pre-development condominium agreements of purchase and sale of other developers of residential condominium projects.

37 Castlepoint never did start construction. Castlepoint alleges that by the late summer and early fall of 2017, rising construction costs made the condominium financially unviable. Castlepoint's financial projections indicated that the project would generate negative returns rather than the minimum level of profit required by project lenders to finance the construction of the condominium.

38 Castlepoint terminated the project by letter to the Plaintiffs and other purchasers dated October 23, 2017. The letter stated:

Dear Sirs:

RE: VENDOR: Castlepoint Greybrook Sterling Inc.

PURCHASER: -

PROJECT: Museum FLTS

LEGAL DESC.:

ADDRESS:

It is with great regret that we must confirm the cancellation of the Museum FLTS condominium. Following more than two years of intense engagement by our team in the design and approval process with community stakeholders and City of Toronto staff, it has become clear that we will not be in a position to obtain the necessary municipal approvals and permits required to build Museum FLTS in the foreseeable future. As such and with the passage of time, the now untenable project timetable has rendered the project commercially un-financeable. Therefore, the project as designed will unfortunately not proceed despite our development team's best intentions.

While we share your disappointment with this news, our commitment to the Lower JCT project and the Junction Triangle community remains strong despite this setback. We remain confident that our long-term vision for a complete and vibrant community will ultimately be realized.

In accordance with Section 6 of the Agreement of Purchase and Sale, this letter represents formal notice that the Agreement of Purchase and Sale is hereby terminated. Enclosed please find a cheque in the amount of \$*, representing the return of your deposit paid in the amount of \$*, plus accrued interest in the amount of \$*. Should you remain interested in the Lower JCT project, we will be pleased to keep you informed of any new offering on the site should you choose to wait for this opportunity.

Please do not hesitate to contact me at your convenience If you have any questions.

Yours very truly,

CASTLEPOINT GREYBROOK STERLING INC.

Alfredo Romano, Co-President

Encl.

39 Castlepoint returned the deposits paid by Purchasers, plus interest to them in 2017.

E. The Availability of Summary Judgment

40 Rule 20.04(2)(a) of the *Rules of Civil Procedure*⁹ provides that the court shall grant summary judgment if: "the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence." With amendments to Rule 20 introduced in 2010, the powers of the court to grant summary judgment have been enhanced. Rule 20.04 (2.1) states:

20.04 (2.1) In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

41 *Hryniak v. Mauldin* does not alter the principle that the court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial. The court is entitled to assume that the parties have advanced their best case and that the record contains all the evidence that the parties will present at trial.¹⁰ Thus, if the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party's evidence or risk a summary judgment.¹¹

42 Under rule 20.02(1), the affidavits for a summary judgment motion may be made on information and belief, but on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

43 The principles governing the admissibility of evidence are the same as apply at trial save for the limited exception of permitting an affidavit made on information and belief.¹² Where an affidavit relied upon in support of a motion for summary judgment does not state the source of the information and the fact of the deponent's belief, the court may nevertheless rely upon the substance of the exhibits to the affidavit in evaluating the merits of the case.¹³

44 In *Hryniak v. Mauldin*¹⁴ and *Bruno Appliance and Furniture Inc. v. Hryniak*,¹⁵ the Supreme Court of Canada held that on a motion for summary judgment under Rule 20, the court should first determine if there is a genuine issue requiring trial based only on the evidence in the motion record, without using the fact-finding powers introduced when Rule 20 was amended in 2010. The analysis of whether there is a genuine issue requiring a trial should be done by reviewing the factual record and granting a summary judgment if there is sufficient evidence to fairly and justly adjudicate the dispute and a summary judgment would be a timely, affordable and proportionate procedure.

45 If, however, there appears to be a genuine issue requiring a trial, then the court should determine if the need for a trial can be avoided by using the powers under rules 20.04 (2.1) and (2.2). As a matter of discretion, the motions judge may use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if their use will lead to a fair and just result and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as a whole. To grant summary judgment, on a review of the record, the motions judge must be of the view that sufficient evidence has been presented on all relevant points to allow him or her to draw the inferences necessary to make dispositive findings and to fairly and justly adjudicate the issues in the case.¹⁶

46 If a judge is going to decide a matter summarily, then he or she must have confidence that he or she can reach a fair and just determination without a trial; this will be the case when the summary judgment process: (a) allows the judge to make the necessary findings of fact; (b) allows the judge to apply the law to the facts; and (c) is a proportionate, more expeditious and less expensive means to achieve a just result.¹⁷ The motion judge is required to assess whether the attributes of the trial process are necessary to enable him or her to make a fair and just determination.¹⁸

47 If the summary judgment motion is refused or granted only in part and the action is ordered to proceed to trial, pursuant to rule 25.05(2), the court has the authority: to schedule; to give directions; and to impose terms. Where a summary judgment is not granted, the court has substantial power to shape the nature of the trial that will follow to resolve the action. Pursuant to rule

20.05(1), where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried, and order that the action proceed to trial expeditiously. Under rule 20.05(3), any facts specified shall be deemed to be established, unless the trial judge orders otherwise to prevent injustice.

48 In the immediate case, the Plaintiffs did not submit that the case was unsuitable for a summary judgment. The Plaintiffs did not disagree with Castlepoint's submissions on the suitability of the case for a summary judgment motion, and I agree that the issue of the interpretation of the exculpatory clause in the purchase agreements (Clause 28) is not one that requires a trial to resolve.

49 There is ample evidence to resolve that issue, and it is an issue that can be being fairly and proportionately resolved by a motion procedure. The case at bar is an appropriate one for a summary judgment.

F. Castlepoint's Submissions about the Application of Clause 28

50 In a submission with which the Plaintiffs also agree, Castlepoint submits that Clause 28, which is an exculpatory clause, is subject to the ordinary and well-established principles of contract interpretation as set out in such cases as: *Creston Moly Corp. v. Sattva Capital Corp.*,¹⁹ and *Ventas Inc. v. Sunrise Senior Living Real Estate Investment Trust*.²⁰

51 With respect to exculpatory provisions, Castlepoint relies on the principles of contract interpretation as set out in *Syncrude Canada Ltd. v. Hunter Engineering Co.*,²¹ where Justice Wilson stated:

[E]xclusion clauses, like all contractual provisions, should be given their natural and true construction. Great uncertainty and needless complications in the drafting of contracts will obviously result if courts give exclusion clauses strained and artificial interpretations in order, indirectly or obliquely, to avoid the impact of what seems to them *ex post facto* to have been an unfair and unreasonable clause.

52 With respect to the enforcement of exculpatory provisions, in another submission with which the Plaintiffs agree, Castlepoint submits that the governing case is the Supreme Court of Canada's decision in *Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways)*.²²

53 In *Tercon*, discussed further below, the Supreme Court of Canada established a three-step approach to the application of exclusion clauses: (a) the first step is to determine whether as a matter of interpretation the exclusion clause applies to the circumstance of the case; (b) if the exclusion clause applies, the second step is to determine whether the clause was unconscionable at the time the agreement was made; and, (c) if the exclusion clause applies and it was not unconscionable, then the third step is to determine whether the court should refuse to enforce the clause because of the presence of an overriding public policy.

54 Castlepoint argues that the language of Clause 28 indicates that the exculpatory provision was intended to apply on termination as occurred in the circumstances of the immediate case and that the language of Clause 28 precludes claims for damages and costs incurred by the purchasers. Applying the first stage of the *Tercon* analysis, Castlepoint submits that Clause 28 is enforceable and applying the second and third stages of a *Tercon* analysis, Castlepoint submits that there is no unconscionability and that the enforcement of Clause 28 would not be against public policy. Therefore, Castlepoint submits that Clause 28 should be enforced and that the Plaintiffs' action should be dismissed.

G. The Plaintiffs' Submissions about the Application of Clause 28

55 The Plaintiffs submit that as a matter of contract interpretation, Clause 28 does not apply to the circumstances of the immediate case. They submit that the clause is ambiguous and that it does not expressly exclude liability for Castlepoint's own wrongdoing or mention the Early Termination Condition. The Plaintiffs point out that there is no mention in Clause 28 of a cause of action based upon the improper exercise of an Early Termination Condition being excluded. The Plaintiffs argue that while Clause 28 could be taken to absolve Castlepoint for a failure to take all reasonable steps to satisfy the financing condition,

given the references to "return of deposit" and "occupancy fees," the clause is intended to exclude only claims by purchasers following termination for a failure to meet the Outside Occupancy Date.

56 As a matter of reading the whole contract in its factual nexus - which includes the statutory regime of the Tarion Addendum - the Plaintiffs argue that it is unlikely that the parties would on one hand agree to the imposition of important obligations like Clauses 1 (a) and 6 (f) on Castlepoint and then on the other hand, exclude all liability for breaches of the clauses.

57 The Plaintiffs submit that upon a proper application of the canons of contract interpretation and bearing in mind both the circumstances giving rise to the contract in the immediate case and also the general organizing principles of contract law that entail a contracting party to perform its obligations in good faith,²³ Clause 28 ought not to be interpreted so as to exclude Castlepoint's obligations to take all commercially reasonable steps within its power to satisfy the financing condition and to construct Museum FLT S without delay.

58 As an alternative argument, if as a matter of contract interpretation, Clause 28 applies to the circumstances of the immediate case, the Plaintiffs argue that Clause 28 ought not to be enforced because it would be contrary to the public policy expressed by the Legislature in the statutory regime that includes the Tarion Addendum.

59 The Plaintiffs submit that Clause 28 is contrary to public policy because it overrides the public policy expressed by the Legislature of Ontario to impose on developers an obligation to take all commercially reasonable steps to fulfill a financing condition and to take all reasonable steps to complete construction of the building to provide occupancy, and to register without delay the declaration and description in respect of the condominium building.

60 It should be noted that the Plaintiffs do not rely on unconscionability or deficiencies in contract formation as an alternative reason not to enforce Clause 28. The Plaintiffs submit that the Defendant's argument should be rejected under the first and or third steps of the *Tercon Contractors* analysis.

H. The Enforcement of Exculpatory Clauses

61 Exculpatory clauses, which are also called disclaimers, limitation of liability clauses, or exemption clauses, limit, qualify, reduce, and sometimes exclude a party's liability for non-performance of its contractual promises. The law has developed a variety of techniques to regulate or control exculpatory clauses.

62 The primary technique to control exculpatory provisions is by employing the rules of contract interpretation. The goal of contractual interpretation is to determine the intent of the parties and the scope of their understanding giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract.²⁴ The rules of contract interpretation direct a court to search for an interpretation from the whole of the contract that advances the intent of the parties at the time they signed the agreement.²⁵ Provisions should not be read in isolation but in harmony with the agreement as a whole.²⁶

63 As a matter of contract interpretation, an exculpatory provision is interpreted strictly to conform with the main purpose of the contract, and the burden is on the party relying on the clause to prove that it is applicable in the circumstances of the particular case.²⁷

64 When there is an ambiguity or contradiction in an agreement that cannot be resolved by the other rules of construction resort, an exculpatory provision is interpreted *contra proferentem*, which is to say that the language of the contract will be construed against the party that inserted the exculpatory provision.²⁸

65 About sixty years ago, in several cases in England, Lord Denning attempted to advance the theory that as a rule of law, an exculpatory provision or disclaimer clause did not protect the party in default if he or she had "fundamentally breached" the contract.²⁹ By a fundamental breach, Lord Denning meant a breach that went to the root of the contract and that denied the innocent party of substantially the whole benefit of the bargain.

66 However, the House of Lords in *Suisse Atlantique Société d'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Central*³⁰ and in *Photo Production Ltd. v. Securicor Transport Ltd.*³¹ and the Supreme Court of Canada in *B.G. Linton Construction Ltd. v. Canadian National Railway*,³² *Chomedy Aluminium Co. v. Belcourt Construction (Ottawa) Ltd.*,³³ and *Syncrude Canada Ltd. v. Hunter Engineering Co.*³⁴ stated that there was no such rule of law.³⁵ The scope of an exculpatory provision was a matter of contract interpretation in every case. Thus, it was possible with sufficiently clear wording to exculpate even a so-called fundamental breach of contract.

67 In *Syncrude Canada Ltd. v. Hunter Engineering Co.*, Chief Justice Dickson noted that there is a distinction between fundamental breach in the context of grounds to end a contract and as a possible tool to control exculpatory provisions.³⁶ In *Hunter Engineering*, the Supreme Court of Canada confirmed the interpretative approach to the law of exculpatory clauses adopted by the House of Lords in *Suisse Atlantique Société d'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Central*, and *Photo Production Ltd. v. Securicor Transport Ltd.*

68 In *Hunter Engineering*, Chief Justice Dickson and Justice Wilson in separate judgments, attempted to find other legal tools to regulate exculpatory clauses. Later, in *Guarantee Co. of North America v. Gordon Capital Corp.*³⁷, Justice Iacobucci and Bastarache described the outcome of *Hunter Engineering* as follows:³⁸

[B]oth Dickson, C.J. and Wilson, J. affirmed that whether fundamental breach prevents the breaching party from continuing to rely on an exclusion clause is a matter of construction rather than a rule of law. The only limitation placed upon enforcing the contract as written in the event of a fundamental breach would be to refuse to enforce an exclusion of liability in circumstances where to do so would be unconscionable according to Chief Justice Dickson, or unfair, unreasonable or otherwise contrary to public policy according to Justice Wilson.

69 After *Hunter Engineering*, the Supreme Court of Canada and other courts³⁹ attempted to develop a modern approach to regulating exculpatory provisions that does not depend upon Lord Denning's fundamental breach theory. The leading case about the enforcement of exculpatory provisions is now *Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways)*.⁴⁰ In this case, Tercon Contractors bid on a contract being tendered by the Province of British Columbia. The Province awarded the contract to another bidder, and Tercon sued the Province for breach of the terms of the bidding contract. The Province relied on an exculpatory provision in the bidding contract to avoid liability to Tercon Contractors.

70 A 5-4 majority of the Supreme Court of Canada comprised of Justice Cromwell with Justices LeBel, Deschamps, Fish, and Charron concurring, concluded that the Province of British Columbia had breached the bidding contract and was *not* entitled to rely on an exemption clause or exculpatory provision contained in the bidding contract. The minority of the court, Justice Binnie with Chief Justice McLachlin and Justices Abella and Rothstein concurring, agreed that there had been a breach but concluded that the exemption clause applied, and the minority would have dismissed the action against the Province.

71 In *Tercon*, although the majority disagreed with the minority's interpretation of the exemption clause as applying to exculpate the Province's liability for breach of contract, the Court was unanimous in adopting Justice Binnie's approach to the regulation of exculpatory provisions. Justice Binnie adopted a modified combination of the approaches suggested in the *Hunter Engineering* case by Chief Justice Dickson and Justice Wilson.

72 Justice Binnie described the contemporary analytical approach to exculpatory provisions at paras. 121-123 of his judgment where he stated:

121. The present state of the law, in summary, requires a series of enquiries to be addressed when a plaintiff seeks to escape the effect of an exclusion clause or other contractual terms to which it had previously agreed.

122. The first issue, of course, is whether as a matter of interpretation the exclusion clause even applies to the circumstances established in evidence. This will depend on the Court's assessment of the intention of the parties as expressed in the

contract. If the exclusion clause does not apply, there is obviously no need to proceed further with this analysis. If the exclusion clause applies, the second issue is whether the exclusion clause was unconscionable at the time the contract was made, "as might arise from situations of unequal bargaining power between the parties" (*Hunter*, at p. 462). This second issue has to do with contract formation, not breach.

123. If the exclusion clause is held to be valid and applicable, the Court may undertake a third enquiry, namely whether the Court should nevertheless refuse to enforce the valid exclusion clause because of the existence of an overriding public policy, proof of which lies on the party seeking to avoid enforcement of the clause, that outweighs the very strong public interest in the enforcement of contracts.

73 Thus, the contemporary approach to the enforcement of exculpatory provisions involves a three-stage analysis.

a. In the first stage, the court asks whether as a matter of interpretation, the exclusion clause applies to the circumstances. Exculpatory provisions are interpreted strictly, and clear words are necessary for the exclusion to apply.

b. In the second stage, if the exclusion clause does apply, then the court asks whether the exclusion clause was unconscionable at the time the contract was made. As a legal doctrine, unconscionability has three elements. The elements of unconscionability are: (1) pronounced inequality of bargaining power; (2) substantially improvident or unfair bargain; and (3) the defendant knowingly taking advantage of the vulnerable plaintiff.⁴¹

c. If the exclusion clause is held to be valid and applicable, in the third stage, the court asks whether the court should refuse to enforce the valid exclusion clause because of the existence of an overriding public policy, proof of which lies on the party seeking to avoid enforcement of the clause, that outweighs the very strong public interest in the enforcement of contracts. The residential power of the court to decline enforcement exists but will rarely be exercised.

74 Justice Binnie framed the problem of the enforcement of exculpatory provisions in the opening two paragraphs of his judgment, where he stated that the party seeking to avoid an exculpatory provision must show a public policy reason to overcome the countervailing public policy that favours freedom of contract. Justice Binnie stated:

81. The important legal issue raised by this appeal is whether, and in what circumstances, a court will deny a defendant contract breaker the benefit of an exclusion of liability clause to which the innocent party, not being under any sort of disability, has agreed. Traditionally, this has involved consideration of what is known as the doctrine of fundamental breach, a doctrine which Dickson C.J. in *Hunter Engineering Co. v. Syncrude Canada Ltd.*, [1989] 1 S.C.R. 426, suggested should be laid to rest 21 years ago (p. 462).

82. On this occasion we should again attempt to shut the coffin on the jargon associated with "fundamental breach". Categorizing a contract breach as "fundamental" or "immense" or "colossal" is not particularly helpful. Rather, the principle is that a court has no discretion to refuse to enforce a valid and applicable contractual exclusion clause unless the plaintiff (here the appellant Tercon) can point to some paramount consideration of public policy sufficient to override the public interest in freedom of contract and defeat what would otherwise be the contractual rights of the parties. Tercon points to the public interest in the transparency and integrity of the government tendering process (in this case, for a highway construction contract) but in my view such a concern, while important, did not render unenforceable the terms of the contract Tercon agreed to. There is nothing inherently unreasonable about exclusion clauses. Tercon is a large and sophisticated corporation. Unlike my colleague Justice Cromwell, I would hold that the respondent Ministry's conduct, while in breach of its contractual obligations, fell within the terms of the exclusion clause. In turn, there is no reason why the clause should not be enforced. I would dismiss the appeal.

[emphasis added]

75 Justice Binnie reviewed how the case law had developed after *Syncrude Canada Ltd. v. Hunter Engineering Co.*, and he stated at paras. 113-117 of his judgment that the courts had a narrow jurisdiction to refuse to enforce an exculpatory provision on grounds of public policy but not a general after-the-fact discretion to refuse to do so on broad grounds of unfairness or

unreasonableness. He stated at para. 117 that: "the residual power of a court to decline enforcement [on grounds of public policy] exists but, in the interest of certainty and stability of contractual relations, it will rarely be exercised." It was Justice Binnie's view that Tercon Contractors could not show a public policy reason not to be bound by the terms of the contract that it had signed. Justice Binnie stated at para. 120:

120. Conduct approaching serious criminality or egregious fraud are but examples of well-accepted and "substantially incontestable" considerations of public policy that may override the countervailing public policy that favours freedom of contract. Where this type of misconduct is reflected in the breach of contract, all of the circumstances should be examined very carefully by the court. Such misconduct may disable the defendant from hiding behind the exclusion clause. But a plaintiff who seeks to avoid the effect of an exclusion clause must identify the overriding public policy that it says outweighs the public interest in the enforcement of the contract. In the present case, for the reasons discussed below, I do not believe Tercon has identified a relevant public policy that fulfills this requirement.

I. The Enforcability of Clause 28: Analysis and Discussion

76 Exclusively for the purposes of the summary judgment motion, Castlepoint conceded that it had breached Clauses 1 (a) and 6 (f) of the Agreements of Purchase of Sale. In other words, exclusively for the purposes of the summary judgment motion, questions 1 and 2 of the proposed common issues would be answered yes. On that basis, the next questions are about the assessment of damages. At this point in the analysis, Castlepoint interjects that Clause 28 states that "[Castlepoint] shall not be liable for any damages or costs whatsoever incurred by the Purchaser resulting from the termination of this Agreement." Castlepoint submits that there is no ambiguity here. It submits it terminated the Agreements of Purchase and Sale (whether by entitlement or by breach is of no moment) and in accordance with Clause 28, it shall not be liable for damages whatsoever.

77 Put shortly, I agree with Castlepoint's argument. Clause 28 applies, and it provides a defence to the Plaintiff purchasers' claims for damages. Put shortly, I disagree with the Plaintiffs' counterarguments.

78 To a large extent, the Plaintiffs' arguments are a reprise of the discarded fundamental breach argument. The Plaintiffs' argument is that interpreting all the relevant contract provisions in the context of the statutory regime makes it fundamental to the performance of the Agreements of Purchase and Sale that the vendor Castlepoint perform its obligations under Clauses 1 (a) and 6 (f) and therefore, properly interpreting the contract, Clause 28 cannot be used to exculpate Castlepoint for the breach of these fundamental terms. The Plaintiffs essentially repeat this argument as a public policy argument in the third step of the *Tercon* analysis.

79 The fundamental breach argument to avoid the enforcement of an exculpatory provision, however, has been categorically rejected by the Supreme Court, and it is a matter of contract interpretation whether an exculpatory provision can apply to a fundamental breach. Accepting that a fundamental breach occurred in the immediate case, the language of Clause 28 applies to exclude liability for damages, and damages is one of the law's remedies for a fundamental breach. Accepting that Clauses 1 (a) and 6 (f) have been fundamentally breached, Clause 28 applies.

80 Lord Denning's doctrine of the fundamental breach responded to the common sense notion that it cannot be fair that a contracting party could make a fundamental promise while simultaneously securing the right to have no liability in the event that he or she did not perform the fundamental promise. However, restoring the interpretative approach that existed before Lord Denning's invention of the fundamental breach, the highest courts in England and in Canada disavowed the fundamental breach doctrine. Exculpatory provisions are a matter of freedom of contract and like other contract provisions they allocate the benefits and the burdens and the risks of contracting. If the language is clear, then an exculpatory provision can apply to a breach of any of the terms of the contract including a fundamental term.

81 In the immediate case, interpreting the Agreements of Purchase and Sale so that Clause 28 applies both (a) where Castlepoint acts in good faith and there has been compliance with the promises of Clauses 1 (a) and 6 (f), and also (b) where Castlepoint has breached Clauses 1 (a) and, or 6 (f), is not inconsistent with reading the contract as a whole or inconsistent with the paramountcy given to the provisions of the Tarion Addendum.

82 The Tarion Addendum allocates the risk of there being a termination of the Agreements of Purchase and Sale. Just focusing on the Tarion Addendum terms, those terms permit an early termination condition. The parties allocated the risk that Castlepoint might rely on this condition by limiting its exposure to a return of the deposit plus interest. This allocation of risk was envisioned or achieved by paragraph 11 (Refund of Monies Paid on Termination), which is part of the Tarion Addendum terms. Paragraph 11 provides that if the Purchase Agreement is terminated without breach by the Purchaser, the Vendor shall refund all monies paid with interest. Paragraph 11 states that nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement as may be agreed to by the parties.

83 Clause 28 is in some respects a codification of paragraph 11 of the Addendum, but if paragraph 11 is a different termination provision, it is was agreed to by the parties and the parties agreed that the Vendor shall not be liable for any damages or costs whatsoever incurred by the Purchaser resulting from the termination of this Agreement.

84 It may be the case that Castlepoint lawfully invoked these provisions, and if so, it is only for the purposes of the summary judgment motion that Castlepoint concedes a breach of the terms of the contract. But it is Castlepoint's argument, with which I agree, that Clause 28 in referring to damages was also meant to apply not only to the circumstance when there was compliance with Clauses 1 (a) and 6 (f) but also when these fundamental promises have been breached.

85 I do not regard this interpretation as inconsistent with the statutory scheme that forms part of the contractual nexus. In a contract in which performance is in the future, there will be risks associated with non-performance. As a matter of freedom of contract, the contracting parties are free to allocate that risk as they may decide in accordance with their mutual intentions. The statutory regime recognizes this allocation of risk.

86 Clause 28 in the immediate case is comparable in its exclusion of damages to the clause considered by the Court of Appeal in *Chuang v. Toyota Canada Inc.*⁴²

87 In the *Chuang* case, Dr. Chuang and his corporations entered into an agreement with Toyota Canada Inc. to build and operate a Lexus dealership in downtown Toronto. Dr. Chuang did not meet deadlines, and Toyota terminated the agreement. Justice Spence, the trial judge, held that Toyota was required to act reasonably in exercising its rights of termination and had not done so. However, Justice Spence dismissed the action against Toyota for damages because of an exculpatory provision that exculpated Toyota from paying damages if there was a termination of the agreement. The exculpatory provision, quite similar to Clause 28 of the immediate case, stated:

In the event of the termination of this LOC and/or the Lexus Dealer Agreement, Lexus and its directors, officers and employees shall not be liable for any losses, damages and/or expenses of any kind whatsoever suffered or incurred by you directly or indirectly in connection with this LOC and/or your Lexus Dealer Agreement.

88 Dr. Chaung appealed the trial decision, and he argued that properly interpreted, the exclusion clause, could not protect Toyota against the consequences of an unreasonable termination of the agreement. In a decision written by Justice Doherty (MacPherson and Miller JJ.A concurring), the Court of Appeal dismissed the appeal.

89 Justice Doherty rejected Dr. Chuang's argument that the exculpatory provision could not be read to negate Toyota's obligation to act reasonably when terminating the agreement. Justice Doherty stated:

32. This submission assumes that the amended LOC [Letter of Commitment] can only reasonably be read by placing the responsibility for a breach of the term of the agreement on the party breaching the agreement. That symmetry is no doubt a feature of many, if not most, agreements. However, parties to an agreement, particularly when they are sophisticated entities operating on a level playing field and engaged in a commercial relationship, are free to allocate risk as the parties see fit. Exclusion clauses are a means of allocating risk. The beneficiary of an exclusion clause contracts out of the obligation that would normally follow from the breach of the contract and places the risk of the breach on the other party to the contract. The extent to which the risk of breach is reallocated to the non-breaching party will depend on the language of the specific exclusion clause considered in the context of the entire agreement: see *Tercon*, per Binnie J., at paras. 96, 102.

[my emphasis added]

[...]

34. The clause is broadly written. The inclusion of the word "damages" is particularly telling. Damages occur as a consequence of a breach of an agreement. The exclusion of liability for "damages ... of any kind whatsoever, suffered or incurred" in addition to the exclusion of liability for "losses", or "expenses" indicates that the exclusion clause reaches beyond terminations that complied with the terms of s. 7. [...]

90 Viewing the enforcement of Clause 28 as a matter of interpretation or considering its application or non-application as a matter of public policy, in my opinion, enforcing the clause is not contrary to the existence of an overriding public policy.

91 The policy of the Tarion Addendum is to allow the parties to agree that the parties may agree to terminations in which, in any event, the vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The policy of the Tarion Addendum states that nothing in the Addendum prevents the parties from entering into other termination agreements. The policy of the Tarion Addendum does not preclude the parties agreeing that the right to terminate may be available when the Vendor has breached the agreement or when the Vendor is not acting in good faith. The policy of the Tarion Addendum does not preclude the Vendor limiting its liability to exclude damages incidental on the termination of the contract.

92 Notwithstanding the Plaintiffs' arguments, Clause 28 does not render Castlepoint's obligations under Clauses 1 (a) and 6 (f) meaningless. Castlepoint continues to have those obligations, and if Castlepoint breached the agreement, then Clause 28, in effect, provides the remedy of rescission for the anticipatory breach of the Agreement of Purchase and Sale. Rescission is a fair and reasonable remedy, particularly in the context of the fluidity of the market for real estate. In the immediate case, who's to say what the value of the condominium units will be on March 2022. The calculation of damages in the immediate case would have been very difficult. The Plaintiffs' action presupposes that they have missed the benefit of the bargain of buying early in a rising market. But real estate prices are volatile.

93 I, therefore, conclude that as a matter of contract interpretation, Clause 28 applies to the circumstances of the immediate case and there is no public policy reason that would override the exculpatory provision that the parties contracted. It follows that Castlepoint has a complete defence to the claim for damages advanced by the Plaintiffs for themselves and for the putative Class Members.

94 It further follows that Castlepoint's summary judgment motion should be granted and Plaintiffs' (uncertified) action should be dismissed.⁴³

J. Certification

95 For the reasons expressed above, I have concluded that Clause 28 is enforceable and therefore Castlepoint has a complete defence to the Plaintiffs' claim for damages. The Plaintiffs' action is therefore dismissed. In these circumstances, the Plaintiffs' motion for certification is moot and should be dismissed on the grounds of mootness.

96 I do note for the record that had the outcome of the summary judgment been different, the action would have been certified, subject to resolving the list of common issues. With respect to the certification criteria, Castlepoint only contested some of the proposed common issues and conceded that the other certification criteria had been satisfied.

K. Conclusion

97 For the above reasons, the certification motion is dismissed, the summary judgment motion is granted, and the Plaintiffs' action is dismissed.

98 If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with the Castlepoint's submissions within twenty days from the release of these Reasons for Decision followed by the Plaintiffs' submissions within a further twenty days.

99 In the circumstances of the Covid-19 emergency, these Reasons for Decision are deemed to be an Order of the court that is operative and enforceable without any need for a signed or entered, formal, typed order.

100 The parties may submit formal orders for signing and entry once the court re-opens; however, these Reasons for Decision are an effective and binding Order from the time of release.

Purchasers' motion granted in part; developer's motion granted.

Footnotes

- 1 S.O. 1992, c. 6.
- 2 *1309489 Ontario Inc. v. BMO Bank of Montreal*, 2011 ONSC 5505 (Ont. S.C.J.) at paras. 18-28; *Ivany v. Financiere Telco Inc.*, 2011 ONSC 2785 (Ont. S.C.J.) at paras. 26-33.
- 3 *1309489 Ontario Inc. v. BMO Bank of Montreal*, 2011 ONSC 5505 (Ont. S.C.J.) at paras. 18-28; *Ivany v. Financiere Telco Inc.*, 2011 ONSC 2785 (Ont. S.C.J.) at paras. 26-33.
- 4 The plaintiff succeed with this argument in *Ivany v. Financiere Telco Inc.*, 2011 ONSC 2785 (Ont. S.C.J.) and *1309489 Ontario Inc. v. BMO Bank of Montreal*, 2011 ONSC 5505 (Ont. S.C.J.).
- 5 *Greenstone (Municipality) v. Marshall Macklin Monaghan Ltd.*, 2013 ONSC 7058 (Ont. Div. Ct.); *Shubaly v. Coachman Insurance*, [2012] O.J. No. 4951 (Ont. S.C.J.); *Dee Ferraro Ltd. v. Pellizzari*, 2012 ONCA 55 (Ont. C.A.); *Ascent Inc. v. Fox 40 International Inc.*, [2009] O.J. No. 2964 (Ont. S.C.J.) (Master).
- 6 *United Food and Commercial Workers Canada, Local 175, Region 6 v. Quality Meat Packers Holdings Limited*, 2018 ONCA 671 (Ont. C.A.); *Lo Faso and Ferracuti*, 2018 ONSC 6308 (Ont. S.C.J.); *1100997 Ontario Ltd. v. North Elgin Centre Inc.*, 2016 ONCA 848 (Ont. C.A.); *Gendron v. Doug G. Thompson Ltd.*, 2016 ONSC 7056 (Ont. S.C.J.); *Dee Ferraro Ltd. v. Pellizzari*, 2012 ONCA 55 (Ont. C.A.).
- 7 *Bank of Montreal v. Morris*, 2013 ONSC 2884 (Ont. S.C.J.); *Timbers Estate v. Bank of Nova Scotia*, 2011 ONSC 3639 (Ont. S.C.J.); *Dugal v. Manulife Financial Corp.*, 2011 ONSC 1764 (Ont. S.C.J.); *Ascent Inc. v. Fox 40 International Inc.*, [2009] O.J. No. 2964 (Ont. S.C.J.) (Master).
- 8 S.O. 1998, c. 19.
- 9 *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- 10 *Canada (Attorney General) v. Lameman*, [2008] 1 S.C.R. 372 (S.C.C.) at para. 11; *Dawson v. Rexcraft Storage & Warehouse Inc.*, [1998] O.J. No. 3240 (Ont. C.A.); *Bluestone v. Enroute Restaurants Inc.* (1994), 18 O.R. (3d) 481 (Ont. C.A.).
- 11 *Toronto Dominion Bank v. 466888 Ontario Ltd.*, 2010 ONSC 3798 (Ont. S.C.J.).
- 12 *Sanzone v. Schechter*, 2016 ONCA 566 (Ont. C.A.) at para. 15; *Caithesan v. Amjad*, 2016 ONSC 5720 (Ont. S.C.J.) at para. 24.
- 13 *Carevest Capital Inc. v. North Tech Electronics Ltd.*, 2010 ONSC 1290 (Ont. Div. Ct.) at para. 16.
- 14 2014 SCC 7 (S.C.C.).
- 15 2014 SCC 8 (S.C.C.).

- 16 *Campana v. Mississauga (City)*, 2016 ONSC 3421 (Ont. S.C.J.); *Ghaeinizadeh (Litigation guardian of) v. Garfinkle, Biderman LLP*, 2014 ONSC 4994 (Ont. S.C.J.), leave to appeal to Div. Ct. refused, 2015 ONSC 1953 (Ont. Div. Ct.); *Lavergne v. Dominion Citrus Ltd.*, 2014 ONSC 1836 (Ont. S.C.J.) at para. 38; *George Weston Ltd. v. Domtar Inc.*, 2012 ONSC 5001 (Ont. S.C.J. [Commercial List]).
- 17 *Hryniak v. Mauldin*, 2014 SCC 7 (S.C.C.) at paras. 49 and 50.
- 18 *Hryniak v. Mauldin*, 2014 SCC 7 (S.C.C.) at paras. 51-55; *Wise v. Abbott Laboratories, Ltd.*, 2016 ONSC 7275 (Ont. S.C.J.) at paras. 320-336; *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund (Trustees of) v. SNC-Lavalin Group Inc.*, 2016 ONSC 5784 (Ont. S.C.J.) at paras. 122-131.
- 19 2014 SCC 53 (S.C.C.). See also: *Miida Electronics Inc. v. Mitsui O.S.K. Lines Ltd.*, [1986] 1 S.C.R. 752 (S.C.C.); *Consolidated-Bathurst Export Ltd. c. Mutual Boiler & Machinery Insurance Co.* (1979), [1980] 1 S.C.R. 888 (S.C.C.); *Canada Steamship Lines Ltd. v. R.*, [1952] A.C. 192 (Jud. Com. of Privy Coun.)
- 20 2007 ONCA 205 (Ont. C.A.).
- 21 [1989] 1 S.C.R. 426 (S.C.C.) at p. 508.
- 22 2010 SCC 4 (S.C.C.).
- 23 See *Bhasin v. Hrynew*, 2014 SCC 71 (S.C.C.).
- 24 *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53 (S.C.C.) at para. 47; *Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways)*, 2010 SCC 4 (S.C.C.) at paras. 64-65; *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21 (S.C.C.) at para. 27.
- 25 *Unique Broadband Systems Inc., Re*, 2014 ONCA 538 (Ont. C.A.) at paras. 83-90; *Consolidated-Bathurst Export Ltd. c. Mutual Boiler & Machinery Insurance Co.* (1979), [1980] 1 S.C.R. 888 (S.C.C.).
- 26 *Scanlon v. Castlepoint Development Corp.* (1992), 11 O.R. (3d) 744 (Ont. C.A.); *Hillis Oil & Sales Ltd. v. Wynn's Canada Ltd.*, [1986] 1 S.C.R. 57 (S.C.C.); *McClelland & Stewart Ltd. v. Mutual Life Assurance Co.*, [1981] 2 S.C.R. 6 (S.C.C.).
- 27 *Gendron v. Doug C. Thompson Ltd. (Thompson Fuels)*, 2019 ONCA 293 (Ont. C.A.); *Braun Estate v. Zenair Ltd.*, [1998] O.J. No. 4841 (Ont. C.A.); *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210 (S.C.C.); *Dunlop Pneumatic Tyre Co. v. New Garage & Motor Co.* (1914), [1915] A.C. 79 (U.K. H.L.).
- 28 *Shelanu Inc. v. Print Three Franchising Corp.* (2003), 64 O.R. (3d) 533 (Ont. C.A.); *Hillis Oil & Sales Ltd. v. Wynn's Canada Ltd.*, [1986] 1 S.C.R. 57 (S.C.C.); *McClelland & Stewart Ltd. v. Mutual Life Assurance Co.*, [1981] 2 S.C.R. 6 (S.C.C.); *Reliance Petroleum Ltd. v. Stevenson*, [1956] S.C.R. 936 (S.C.C.).
- 29 *Harbutt's "Plasticine" Ltd. v. Wayne Tank & Pump Co.* (1969), [1970] 1 Q.B. 447 (Eng. C.A.); *Harrow Karsales Ltd. v. Wallis*, [1956] 2 All E.R. 866 (Eng. C.A.).
- 30 [1966] 2 All E.R. 61 (U.K. H.L.).
- 31 [1980] A.C. 827 (U.K. H.L.).
- 32 (1974), [1975] 2 S.C.R. 678 (S.C.C.).
- 33 [1980] 2 S.C.R. 718 (S.C.C.).
- 34 [1989] 1 S.C.R. 426 (S.C.C.).

- 35 *B.G. Linton Construction Ltd. v. Canadian National Railway* (1974), [1975] 2 S.C.R. 678 (S.C.C.); *Chomedy Aluminium Co. v. Belcourt Construction (Ottawa) Ltd.*, [1980] 2 S.C.R. 718 (S.C.C.); *Syncrude Canada Ltd. v. Hunter Engineering Co.*, [1989] 1 S.C.R. 426 (S.C.C.).
- 36 Although the Supreme Court in *Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways)*, 2010 SCC 4 (S.C.C.) laid to rest the doctrine of fundamental breach as it pertains to exclusion clauses, it remains entrenched in the law of contract as an available remedy to the innocent party for a breach of contract: *1723718 Ontario Corp. v. MacLeod*, 2010 ONSC 6665 (Ont. S.C.J.) at para. 72.
- 37 [1999] 3 S.C.R. 423 (S.C.C.).
- 38 [1999] 3 S.C.R. 423 (S.C.C.) at para. 52.
- 39 See, for example the decision of the Ontario Court of Appeal in *Shelanu Inc. v. Print Three Franchising Corp.* (2003), 64 O.R. (3d) 533 (Ont. C.A.).
- 40 2010 SCC 4 (S.C.C.).
- 41 *Birch v. Union of Taxation Employees, Local 70030* (2008), 93 O.R. (3d) 1 (Ont. C.A.); *Titus v. William F. Cooke Enterprises Inc.*, 2007 ONCA 573 (Ont. C.A.); *Black v. Wilcox* (1976), 12 O.R. (2d) 759 (Ont. C.A.); *Munding v. Munding* (1968), [1969] 1 O.R. 606 (Ont. C.A.); affd. [1970] S.C.R. vi (note) (S.C.C.); *Vanzant v. Coates* (1917), 40 O.L.R. 556 (Ont. C.A.); *Waters v. Donnelly* (1884), 9 O.R. 391 (Ont. Div. Ct.).
- 42 2016 ONCA 584 (Ont. C.A.), aff'g, 2015 ONSC 885 (Ont. S.C.J.), leave to appeal to the S.C.C. ref'd, (2017), [2016] S.C.C.A. No. 568 (S.C.C.).
- 43 Because the action was not certified, the summary judgment is not binding as against the putative Class Members.

[3] At the close of oral argument, I advised the parties that I granted the application for specific performance with reasons to follow. On my review of the circumstances of the case, the obligation to purchase under the shotgun clause has not been frustrated. At best, the ability to borrow money has become more limited than it was before the pandemic. Limitations on financial liquidity do not amount to frustration. They are regular events that occur during each economic cycle. If decreased liquidity was tantamount to frustration, it would mean that a large number of contracts for which parties required financing would be frustrated in every recession.

[4] Specific performance continues to have a salutary effect even if as the respondent submits, it cannot obtain financing. At a minimum, it forces the respondent to make more meaningful efforts to obtain financing that it had to the date of closing and affords the court the opportunity to provide flexible and appropriate relief if the respondent does not obtain financing.

[5] There are no equitable principles present in this case that militate against specific performance. The respondent knew that the project faced challenges. It could have sold pursuant to the shotgun provision, but it chose to buy. The respondent willingly took the risks of that obligation. There is no reason to relieve the respondent of that obligation or its attendant risks.

The Parties and the Project

[6] The applicant, FSC (Annex) Limited Partnership, is an affiliate of Forgestone Capital. Forgestone is a Canadian private equity and advisory firm that specializes in real estate. Among other things, it manages a number of funds that invest in real estate projects on behalf of institutional investors. For ease of reference I will refer to the applicant throughout these reasons as Forgestone.

[7] The respondent, Adi 64 Prince Arthur L.P. is a single-purpose entity affiliated with the Adi Development Group, a real estate developer focusing on the development and construction of condominium projects in the Greater Toronto Area. For ease of reference I will refer to the respondent as Adi.

[8] Forgestone and Adi are partners in a joint venture to rezone and redevelop 64 Prince Arthur Avenue in Toronto into a luxury condominium with approximately 140 units. They hold their interest in the project through a limited partnership. Adi holds 20% of the equity, Forgestone holds 80%. Their financial obligations are commensurate with their equity interests. Consistent with other projects that Adi has developed, it tends to take a minority position in the project but manages and executes the development in return for a development management fee

[9] It appears that Forgestone and Adi had difficulty working together. As a result, Forgestone exercised the buy/sell provision in the limited partnership agreement on December 20, 2019. On January 9, 2020, Adi elected to purchase Forgestone's interest for \$12,733,289 as opposed to selling its own interest to Forgestone for an identical price prorated to Adi's 20% interest. In agreeing to purchase, Adi also agreed to close the purchase on April 8, 2020.

[10] On March 25, 2020, Adi advised that it would not close on April 8, 2020. In doing so, Adi stated that the “closing would be delayed” due to the “unforeseeable delay caused by” the Covid-19 pandemic.

[11] In response, Forgestone brought this application for specific performance. Adi resists on three principal grounds: (i) Forgestone does not come to court with clean hands; (ii) the agreement to purchase has been frustrated; and (iii) equitable principles militate against specific performance.

(i) Clean Hands

[12] Adi submits that Forgestone is in default under several provisions of the joint venture agreements, the most significant of which is that Forgestone has, since July 1, 2019, failed to pay the development management fee it allegedly owes Adi.

[13] It is not necessary to delve into the conflicting facts about whether Forgestone is or is not in default of this obligation. The default that Adi alleges is one of which Adi was fully aware when it received the buy sell notice on December 20, 2019. Adi never raised the alleged default as a basis for invalidating shotgun offer, limiting its exercise, or for giving Adi a right of set-off. Instead, Adi unreservedly agreed to purchase Forgestone’s interest.

[14] Adi has advanced no reason for failing to raise the alleged default at an earlier stage. Having agreed to purchase Forgestone’s interest with full knowledge of the alleged default, Adi cannot now raise the alleged default as a basis for prohibiting Forgestone from exercising its rights under the buy/sell provision.

(ii) Frustration

[15] Adi submits that it has not breached the purchase agreement but that its ability to close was frustrated by Covid-19.

[16] Adi cites *Naylor Group Inc v Ellis-Don Construction Ltd.*, 2001 SCC 58, at para 53 for the proposition the doctrine of frustration relieves the parties of their bargain

"when a situation has arisen for which the parties made no provision in the contract and performance of the contract becomes a thing radically different from that which was undertaken by the contract."

[17] Adi points out that when it entered into the purchase agreement, market conditions were favourable and that the Covid-19 pandemic was an extraordinary event that had never occurred before in human history. It says the economic downturn as a result of Covid-19 was completely unforeseeable.

[18] I take a different view based both on the facts of this case and on the law of frustration.

[19] Turning first to the facts of the case. Adi accepted the obligation to purchase Forgestone's interest on January 9, 2020. The government of Ontario did not declare a state of emergency until March 17, 2020. That gave Adi over three months to obtain financing. Within that three months it had not managed even to obtain a letter of intent.

[20] Adi's efforts to obtain financing could be described as somewhat relaxed.

[21] When Adi accepted the obligation to purchase, it did not have any financing available. There is no evidence that it made efforts to investigate financing before accepting the obligation to purchase. The obligation to purchase was unconditional and was not in any way associated with the ability to obtain financing.

[22] Before Adi advised on March 25, 2020 that it would not be closing on April 8, it had discussions with only a handful of potential financing sources. The more limited scope of those discussions had nothing to do with Covid-19. Rather, they were a deliberate choice made by Adi. As Mr. Adi testified during cross-examination:

We are a relationship-driven company...

We do not go out into the market and hop deals, so to speak. We have got deep, entrenched relationships that are built on trust and integrity, that trust in our ability to execute, understand our experience and track record as an operator that can execute on very large-scale projects. And generally, those relationships are all that is necessary to have discussions about a site like this.

[23] How broadly Adi wants to make inquiries about financing is a decision it is free to make. If, however, it chooses to limit itself to a narrow canvas of the market, it cannot later take the position that the contract has been frustrated simply because its narrow canvas has not resulted in financing.

[24] Adi decided to approach only a small number of potential lenders although it knew that the project had its challenges. Moreover, it sought funding for more than was required to buy out Forgestone. By way of example, Adi asked one potential lender, KingSett for \$4 million more than was required to purchase Forgestone's interest. Even accepting the frustration argument for a moment, all this would demonstrate is that Adi was frustrated in its ability to obtain \$4,000,000 more than required to buy out Forgestone, not that it was frustrated in its ability to obtain financing to buy out Forgestone.

[25] I also take a different view of the, "never before in human history" approach to the issue. While it may be that we have not experienced a pandemic of this proportion in our lifetimes, restrictions on the availability of credit are not uncommon. They occur regularly as part of the ebb and flow of economic cycles. Any decline in values of real estate is associated with more

restrictive lending practices and reduced liquidity. There is nothing unusual about that. That is one of the risks entrepreneurs face. While there was no expert evidence led on the point, there does not appear to be any widespread freezing of liquidity in the marketplace as occurred for example in 2008-2010. Even if there were a general freezing of liquidity, that would also not constitute frustration because restrictive lending practices are not unforeseen and are a common feature of economic downturns. Moreover, it is also a risk against which a purchaser can protect itself by making the purchase conditional upon financing.

[26] Adi responds that it could not make the purchase conditional upon financing because a conditional purchase was not valid under the buy/sell provision. That misses the point. At its highest, that simply means that Adi did not have the financial wherewithal to exercise the purchase option and should not have done so. Adi must bear the risk of its choice.

[27] It would be entirely unfair to let Adi exercise the purchase option and then let it claim frustration when it could not obtain financing as a result of an economic downturn. The potential for an economic downturn is an inherent risk in any purchase decision and is not one from which a purchaser should be protected by the doctrine of frustration.

[28] If it were otherwise, purchasers would have the option to resile from contracts if economic circumstances took a turn for the worse between the date of the agreement of the date of closing. There are of common contractual provisions to cover that eventuality such as financing conditions, material adverse change clauses and material adverse event clauses. Adi employed none of them.

[29] The risk of committing to purchase under a buy sell provision is well known. As the Alberta Court of Queen's Bench put it in *Trimac Ltd. v. C-I-L Inc.* (1987), 1987 CanLII 3376 (AB QB), 52 Alta. L.R. (2d) 263 at para. 29:

“A shotgun buy-sell is strong medicine. One takes it strictly and in accordance with the prescription or not at all”.

Other courts have also held that economic downturns and lack of financing do not amount to frustration. In *Bang v. Sebastian*, 2018 ONSC 62264 the purchaser failed to close and argued that the decline in the value of real estate and the inability to obtain financing amounted to frustration. The Court rejected the submission because neither event “radically altered” the purchasers obligations. The court noted that, as is the case here, the defendant in *Bang* knew she would need financing when she entered into the agreement. A decline in the value of real estate did not “radically” change the defendant’s obligations under the agreement to pay a specific amount on closing, regardless of whether she could obtain financing: see paras. 33 – 34 and 37. The court in *Paradise Homes North West Inc. v. Sidhu*, 2019 ONSC 1600 came to a similar conclusion.

[30] The respondent places considerable weight on *First Real Properties Limited v Biogen Idec Canada Inc.*, 2013 ONSC 6281 (CanLII) in support of its argument with respect to

frustration. Adi notes that in *First Real Properties*, a contract was found to be frustrated because the cost of performing it exceeded the expectations of the parties. The case is, however, more nuanced than that. In *First Real Properties*, a landlord had agreed to install windows along the wall of a building to accommodate a tenant's wishes. Both landlord and tenant thought the windows would cost approximately \$48,000. The wall turned out to be loadbearing which increased the cost of installing the windows by a factor of 10. In that case, the court found that it was inappropriate to compel the tenant to take the premises without the windows and found that the contract was frustrated.

[31] In arriving at the conclusion of frustration, the court noted that businesspeople from both landlord and tenant felt they could not compel each other to perform. The court also cited authority that tied the doctrine frustration to that of mistake. In *First Real Properties*, both parties were mutually mistaken that the windows would cost \$48,000. The court also tied the concept of frustration to that of equity with the underlying question being whether it was just to the parties or their bargain to hold that the contract was frustrated. In circumstances where the businesspeople of both sides agreed they could not hold each other to the bargain, both parties were under a mutual mistake and the where correct state of affairs increased the cost by tenfold, the court found that it was just to release the parties from their bargain.

[32] The facts of this case are quite different. There was no mutual mistake. The risk of economic downturn was well known and was one against which Adi could have , but did not, protect itself.

(iii) Equitable Considerations

[33] Adi raises a number of considerations which it submits make specific performance inappropriate.

[34] First, Adi points to section 10.4 (h) of the Limited Partnership Agreement, the effect of which is to allow Forgestone to purchase Adi's interest in the joint venture at a 10% discount from the shot gun price because Adi failed to close. Adi submits that Forgestone should be limited to this remedy. However, section 10.4 (h) makes it clear that the discounted purchase is a remedy available to the vendor "in addition to any other remedy which it may have under this Agreement." Section 11.1 (b) (i) of the Limited Partnership Agreement provides that, in the event of a default by a partner, the non-defaulting party may:

bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by the Limited Partners that damages at law may be an inadequate remedy for a Default, breach or threatened breach of this Agreement.

[35] Second, Adi submits that damages are an adequate remedy.

[36] In this regard, Adi submits that there is nothing unique or special about the purchase agreement, that Forgestone's interest in the property was for the sole purpose of realizing a financial return, and that the joint venture agreements themselves are not unique.

[37] I see a number of difficulties with this submission. First, the Limited Partnership Agreement provides for specific performance and acknowledges that damages may not be an adequate remedy.

[38] Second, the damages that Adi suggests Forgestone pursue are those that would arise by having Forgestone sell its interest to a third party purchaser and sue Adi for the difference in price between the shotgun sale and the purchase price on the sale to the third party. This only embroils the parties in a further lawsuit. Presumably one that could become additionally complicated by potential allegations of Forgestone's failure to mitigate by marketing its interest improperly.

[39] A sale by Forgestone becomes additionally complicated because any purchaser would have to become party to multiple agreements that govern the project. In addition, section 10.1 of the Limited Partnership Agreement provides that no transfer of a partnership interest can occur without the approval of 100% of the limited partners. In other words, Adi would have to approve of the sale.

[40] These provisions create a series of practical complications. They require Forgestone to find someone willing to acquire an interest in the Limited partnership subject to Adi's right to continue to manage it. They require this in circumstances where the sale is occurring because of a breakdown in relations between Adi and Forgestone. And they require this in circumstances where Adi must approve the sale. If Adi refused a potential purchaser, there would presumably be a further fight about the degree to which the refusal was based on *bona fide* reasons or the degree to which it was based on inappropriate reasons such as, for example, the fact that the purchase price was lower than the price under the shotgun offer and would therefore subject Adi to an action for damages.

[41] In the foregoing circumstances, specific performance has much to recommend it.

[42] Finally, Adi submits that the balance of equities does not favour an award of specific performance. It submits that the court would be allocating a "disproportionate amount of risk" to Adi by requiring it to pay the purchase price because the court would be allocating "100% of the risks and pressures arising from an unprecedented health pandemic and the associated economic blowback, entirely to" Adi, which it submits is unjust, unfair and inequitable.

[43] I see the equities differently. As noted earlier, while the temporary economic downturn is attributable to a pandemic unprecedented in most of our lifetimes, the idea of a decline in real estate markets or a contraction in the availability of financing is by no means unprecedented. Those are risks that all purchasers who require financing assume when they enter into purchase agreements. To relieve Adi of that risk and place the risk upon Forgestone would be the

inequitable result. It would effectively mean that a purchaser could obtain all of the benefit of a decision to purchase but leave with the vendor all of the risk that may arise between the date of purchase and the date of closing. While there are contractual mechanisms to bring this about, they were not employed here. Adi must take the bitter with the sweet. If it wishes to enjoy what it presumably perceived as the superior benefits of purchasing from rather than selling to Forgestone, it must also assume the attendant downside risks.

Disposition

[44] For the reasons set out above, I order that, within 90 days of June 26, 2020, Adi specifically perform its obligations to purchase Forgestone's interest in the project pursuant to its offer to purchase dated January 9, 2020.

[45] If any party seeks costs as a result of these reasons, they may file written submissions within 14 days of their release. A responding party will have seven days to answer with a further three days for reply.

Koehnen J.

Released: August 21, 2020

FSC (ANNEX) LIMITED PARTNERSHIP v. ADI 64 PRINCE ARTHUR L.P
2020 ONSC 5055
COURT FILE NO.: CV-20-00639531-00CL
DATE: 20200821

ONTARIO
SUPERIOR COURT OF JUSTICE

Commercial List

BETWEEN:

FSC (ANNEX) LIMITED PARTNERSHIP

Applicant

– and –

ADI 64 PRINCE ARTHUR L.P.

Respondent

REASONS FOR JUDGMENT

Koehnen J.

Released: August 21, 2020

CITATION: Amlani v. York Condominium Corporation No. 473, 2020 ONSC 194
COURT FILE NO.: CV-18-598709
DATE: 20200113

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
NASIRALLI AMLANI and) *Rodrique Escayola, David Plotkin, for the*
NASIMBANOO AMLANI) applicants
)
Applicants)
)
– and –)
) *Jonathan Fine for the respondent*
YORK CONDOMINIUM CORPORATION)
NO. 473)
)
Respondent)
)
)
) **HEARD:** November 21, 2019

KOHENEN J

Overview

[1] The Applicants ask me to restrain the sale of their apartment pursuant to a lien that the respondent purported to register under s. 85 of the *Condominium Act*, 1998, SO 1998, c 19 (the “*Act*”). I grant their application.

[2] Section 85 of the *Act* allows for the automatic registration of a lien in respect of common expenses. Section 134 of the *Act* provides that expenses in respect of compliance and enforcement expenses can only be liened with a court order. I find that the expenses at issue here fall under s. 134 of the *Act*. Since there was no court order authorizing a lien of those expenses, the lien is invalid and must be discharged.

[3] The applicants also claim damages under the *Act*'s oppression remedy. I grant damages in the amount of \$9,679.75 for oppression. The respondent acted oppressively in refusing to discuss the issue in dispute between the parties. Instead, it ran up approximately \$25,000 in legal fees,

sought to impose those costs on the applicants through a facially invalid lien and then tried to sell the respondents' apartment pursuant to the invalid lien.

[4] All of this arose in respect of an issue to which the evidence indicates there are simple, low cost solutions. The respondent refused to discuss solutions despite the applicants' requests to do so. In so refusing, the respondent breached its own constating documents which call for good faith negotiation of issues before taking legal steps. Here, a good faith discussion would likely have led to a resolution that met the goals of all of the condominium's residents at a fraction of the costs reflected in the lien, let alone the cost of this litigation.

I. The Facts

[5] In 2013, the applicants, Mr. and Mrs. Amlani were looking to purchase a condominium unit. They were attracted to unit 2802 in the respondent, York Condominium Corporation No. 473 (the "Corporation"). Given that Mr. Amlani had smoked for 56 years, he wanted to ensure that the Corporation had no rules against smoking. As a result, he had a lawyer review the Corporation's constating documents to ensure this was the case. After receiving confirmation that there were no rules against smoking, the Amlanis purchased the unit and began living there December 2013.

[6] In 2015, some of the applicants' neighbours complained that the smell of smoke was filtering from the Amlanis' unit into their own apartments. The Corporation hired a contractor to seal certain openings in the applicants' unit to prevent the smell from escaping. The Corporation absorbed the cost of doing so. The work appears to have been successful and complaints about Mr. Amlani's smoking stopped.

[7] In March 2017, new complaints arose about the smell of smoke leaving Mr. Amlani's unit. In response, the Corporation wrote Mr. Amlani on April 27, 2017 stating:

"... you are requested to be circumspect with respect to your smoking and/or refrain from smoking in order to protect other residents."

[8] In response, Mr. Amlani restricted his smoking in the unit to an enclosed sunroom which he believed was sealed. He also installed an air filter in the sunroom.

[9] The next communication from the Corporation to Mr. Amlani was a letter from the Corporation's lawyers, Fine & Deo dated July 6, 2017. After stating that Mr. Amlani's smoking was a danger and a nuisance it concluded:

"The Board of YCC 473 hereby demands that you immediately cease and desist from smoking in your unit. Please confirm to me, in writing, on or before July 20, 2017 that you are willing to cooperate and comply,"

[10] The letter also warned Mr. Amlani that he would be liable for the Corporation's costs of enforcing his compliance.

[11] Mr. Amlani responded with a letter from his own lawyer which noted that, in the past, Mr. Amlani had cooperated in addressing any inconvenience his smoking caused and sought a dialogue with the Corporation to resolve the issue. On July 20, 2017 Mr. Amlani wrote his own letter to the property manager asking for a meeting with the Corporation's Board of Directors and the residents of the 28th floor to "discuss openly, without prejudice in a transparent manner, to sincerely attempt to resolve the matter at hand." Mr. Amlani also asked the property manager for relevant application forms that may be required to refer the issue to mediation. On August 11, 2017, Mr. Amlani's lawyer indicated that he was prepared to hire an engineering company, at his own cost if necessary, to prepare a report to determine if the problem could be solved. He also indicated that he would be prepared to use any company the Corporation could recommend for this purpose.

[12] On August 25, 2017, Mr. Deo wrote to Mr. Amlani's lawyer indicating that he had left two messages that week had not heard back from him, asked that Mr. Amlani immediately stop smoking in the unit until the matter could be resolved and asked Mr. Amlani for \$2,000 as an interim deposit for the engineering report that the Corporation would be commissioning.

[13] On September 1, 2017 Mr. Amlani advised Fine & Deo that, on September 7, 2007, he would be moving out until the issue was resolved. In addition, he indicated that he had spoken to three professionals who said that there were simple solutions to the problem but that it would help them to get more details about the specific complaints so that they could design solutions tailored to those complaints. Mr. Amlani therefore asked for redacted copies of the complaint letters to enable the service providers to devise a solution more closely tailored to the circumstances.

[14] On September 6, 2017, Mr. Amlani had The BSG Group inspect his apartment to propose solutions. BSG proposed some relatively inexpensive solutions including a perimeter gasket around the entry door to the apartment and better sealing of openings through which smoke smell could migrate such as light fixtures, light switches and water pipes.

[15] As promised, the Amlanis vacated their unit on September 7, 2017 and rented it to a tenant. They included a no smoking clause in the lease even though the Corporation did not have a rule against smoking.

[16] On September 14, 2017 the Corporation issued a Compliance Demand Notice addressed to Mr. Amlani demanding a full and immediate cessation of smoking in the unit by September 22, 2017, even though Mr. Amlani had already moved out.

[17] On November 6, 2017 Mr. Amlani requested mediation. On the same day he sent the Corporation a copy of the BSG report. BSG prepared a second report in March 2019. It provides a little more technical detail but is not materially different in its conclusions and recommendations.

[18] In response to the request for mediation, the Corporation appointed a mediator and set the mediation date, both without consulting Mr. Amlani. Mr. Amlani nevertheless cooperated and participated in the mediation. Part way through the mediation, counsel and the representative Board member indicated that he had another appointment and left.

[19] The Corporation then sought to impose the entire mediation cost on Mr. Amlani, even though the Corporation's bylaws provide that mediation costs should be shared.

[20] In April 2018, the Corporation passed a non-smoking rule which prohibited smoking in all units. The rule contained a grandfathering provision that allowed smoking residents to apply to the Board for an exemption while they lived in the unit.

[21] Mr. Amlani applied under the grandfathering provision. The Corporation rejected his request because Mr. Amlani was no longer living in the unit.

[22] The Corporation hired its own expert for this proceeding, Mr. Philip Brearton, of Cion Coulter. In his report, Mr. Brearton states:

“Further effort to seal Suite 2802 is not recommended because this is an unrealistic goal. There is no lower threshold for safe exposure to tobacco smoke consequently, to be “smoke-free”, a perfect seal in Suite 2802 must be achieved at all times. Beyond the challenge of managing the opening of the unit’s entrance door, achieving a “perfect seal” is not possible with current building materials and construction practices.”

[23] On cross-examination, Mr. Brearton admitted that steps could be taken to decrease the smell of smoke in neighbouring units but his mandate did not include proposing or assessing such steps. He was asked only to opine about whether a “perfect seal” was possible.

[24] Mr. Brearton admitted on cross-examination that there are “relatively easy techniques” to seal openings through which the smell of smoke can migrate. These include sealing gaps in floors, walls, doors, ductwork or between walls and pipes.

[25] In March 2018, the Corporation served the Amlanis with a Notice of Intention to Enforce Security. It states that the Amlanis owe the Corporation \$25,108.77, that the Corporation has placed a lien on the unit and that the Corporation will enforce the lien by selling the Amlani’s apartment. This prompted Mr. and Mrs. Amlani to bring this application to restrain the sale.

[26] The entire amount of the lien reflects the legal fees of the Corporation’s lawyers, Fine & Deo. The last demand for payment of legal fees that the Corporation sent Mr. Amlani before he moved out was sent on August 23, 2017 and was for \$863.99. While Fine & Deo docketed an additional approximately \$1,500 more before Mr. Amlani actually moved out, it is clear that the vast majority of the legal fees arose after Mr. Amlani vacated his unit.

II. Legal Analysis

A. The Statutory Provisions

[27] The enforceability of the lien turns on whether the amount the Corporation claims falls within s. 85 or s. 134 of the *Act*.

[28] Section 85 of the *Act* provides:

85 (1) If an owner defaults in the obligation to contribute to the common expenses payable for the owner’s unit, the corporation has

a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount.

[29] Section 134 of the *Act* allows the Corporation, among others, to apply to the Superior Court of Justice for an order "enforcing compliance" with any provision of the Act, the condominium's declaration, bylaws or rules (which I may refer to from time to time as its constating documents) and recover the costs of doing so in a court order:

134 (1) Subject to subsection (2), an owner, an occupier of a proposed unit, **a corporation**, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit **may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules** or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement (Emphasis added).

(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit.

[30] The Corporation submits the lien amounts fall within s. 85 of the *Act* and are automatically enforceable. The Amlanis submit that the lien amounts fall within section 134 of the *Act* and are not enforceable in the absence of a court order that awards the Corporation damages or costs. Since there has been no court order, the Amlanis submit that the lien is invalid and must be vacated.

[31] In determining which interpretation I adopt, the Corporation submits that I must keep in mind the overall purpose of those sections and of the *Act* which is to place the financial burden created by the conduct of any one unit holder on that particular unitholder rather than on the Corporation. If the financial burden is placed on the Corporation, it is effectively placed on innocent unitholders who must pay for the Corporation's expenses by way of common expenses or special assessments: *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.*, [2005] O.J. No 1604 at para. 40.

[32] I accept that this is part of the overall scheme of the *Act* but am nevertheless of the view that the expenses the Corporation claims are not common expenses under s. 85 but are expenses that relate to "enforcing compliance." It is clear that s. 134 costs cannot be added to the common expenses of the Amlanis' apartment without an order under section 134 (5): *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.*, [2005] O.J. No 1604 at para.

35 (C.A.). Here, however, the Corporation seeks to shift the financial burden from itself to Mr. Amlani without a court order authorizing it to do so.

[33] Common expenses, in their most traditional form, apply to the monthly fees each unit owner pays for utilities and the general upkeep of the condominium project. If a unit owner defaults on those monthly obligations, the default can be liened and the unit can be sold to enforce the lien. Section 84 (1) of the *Act* underscores this interpretation when it provides that a unitholder shall pay common expenses in the proportions specified in the declaration.

[34] It is one thing to allow the corporation to enforce, by way of lien, common expenses that are applicable to all unit holders and that a majority of unitholders have approved. It is entirely another to allow a condominium corporation the unfettered, unilateral right to impose whatever costs it wants on a unitholder, refer to them as common expenses and thereby acquire the right to sell the unitholder's apartment.

[35] I am strengthened in this view by other provisions in the *Act* that specifically allow a condominium corporation to add certain types of costs unique to a single owner to the common expenses of the particular unit holder without a court order. By way of example, sections 92(1) and (4) provide that a corporation can carry out certain repairs if an owner fails to do so and can add the cost of such repairs to the owner's common expenses. In a similar vein, section 105(2) provides that if an owner causes damage, the lesser of the cost of repair or the corporation's insurance deductible may be added to the owner's common expenses. Legal fees and enforcement costs do not fall into these categories.

[36] In the Corporation's communications with Mr. Amlani and in its law firm's accounts, the services in respect of which the Corporation seeks reimbursement are described as compliance and enforcement expenses, not as common expenses. By way of example:

- (a) The Fine & Deo letter of July 6, 2017 stated that if Mr. Amlani failed to "comply" he would be held liable for the Corporation's "cost of enforcing your compliance by means inclusive of a court application under section 134 of the Act".
- (b) The Fine & Deo account of October 4, 2017 is for "legal costs incurred in enforcement of the Corporation's Declaration and Rules."

[37] It is only in the notice of lien that these enforcement costs are referred to as "common expenses".

[38] The Corporation submits that the Declaration allows it to add these costs to Mr. Amlani's common expenses through two provisions: the definition of common expenses and an indemnification provision.

(i) The Definition of Common Expenses

[39] The Declaration defines common expenses as:

"(1) Common expenses means the expenses of the performance of the objects and duties of the Corporation and, without limiting the

generality of the foregoing, shall include those expenses set out in Schedule “E” attached hereto.

[40] Schedule “E” includes legal expenses among those costs permitted to be included in common expenses. In the absence of anything more, however, the common expenses referred to in clause (1) of the definition refer to the monthly expenses for which each owner is rateably liable.

[41] This is clear from sub-paragraph two of the definition of common expenses in the Declaration provides:

(2) Each owner, including the Declarant shall pay to the Corporation his proportionate share of the common expenses, as may be provided for by the bylaws of the Corporation, and the assessment and collection of contribution toward the common expenses may be regulated by the Board pursuant to the bylaws of the Corporation.

[42] This reiterates the concept that common expenses are the proportionate share of the Corporation’s costs of managing the project that are attributable to each unit rather than costs that the Corporation can unilaterally ascribe to a particular unit.

(ii) The Indemnity

[43] The Corporation argues the Declaration contains an indemnity in article 11 which allows it to act as it has. The indemnity provides:

“Each owner shall indemnify and save harmless the Corporation from and against any loss, cost, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such owner, ... to or with respect to the common elements and/or all other units except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of Insurance) and insured against by the Corporation. (Emphasis added)

All payments pursuant to this clause are deemed to be additional contributions toward the common expenses and recoverable as such.”

[44] The Corporation interprets the indemnity as meaning that the legal expenses of its lawyers are lienable under section 85 (1) of the Act and relies on *London Condominium Corporation No. 13 v. Awaraji*, 2007 ONCA 154 for the proposition that a court should not interfere with a condominium corporation’s interpretation of its declaration unless it is unreasonable.

[45] In my view, the Corporation’s interpretation of the indemnity is unreasonable.

[46] The indemnity applies only with respect to costs the Corporation incurs arising out of acts by owners “to or with respect to the common elements and/or all other units.” There was no act of Mr. Amlani to the common elements or to all other units. Moreover, the costs the Corporation

incurred after Mr. Amlani left his unit could not possibly arise out of acts by Mr. Amlani to the common elements or all other units because he was out of the building and was not engaging in any acts with respect to the common elements or otherwise. Finally, the interpretation the Corporation advances contravenes section 134 (5) of the *Act* because the costs it claims related to compliance and enforcement costs without being embodied in a court order. An interpretation that contravenes a statutory provision is, by definition, unreasonable. Here again it is relevant to note that the legal accounts for which the corporation claims indemnity describe the services as relating to the “enforcement of the Corporation’s Declaration and Rules” and not as relating to the protection of any common elements.

B. Safety Concerns and The Law of Nuisance

[47] The Corporation submits that it had no choice but to proceed as it did because:

- (a) The smell in neighbouring units was actually secondhand smoke.
- (b) I should take judicial notice that secondhand smoke kills.
- (c) Section 3(1) of the *Occupiers Liability Act*, R.S.O. 1990, c. O.2, imposes a duty to take such care as is reasonable to ensure that persons entering premises are reasonably safe.
- (d) Section 23(6) of the *Act* provides that a judgment against a condominium corporation is a judgment against all unit holders.

[48] To demonstrate the urgency of the situation the Corporation faced, Mr. Fine combined these four points into an example of a unit owner contracting cancer from secondhand smoke, suing the Corporation for its failure to stop the migration of secondhand smoke and obtaining a judgment for which all unitholders were personally liable.

[49] The Corporation argues that diminishing the dissipation of smoke from Mr. Amlani’s unit was no solution. In support of this proposition the Corporation points to Mr. Brearton’s expert report which, states that:

“There is no lower threshold for safe exposure to tobacco smoke consequently, to be “smoke-free”, a perfect seal in Suite 2802 must be achieved at all times.”

[50] According to Mr. Fine, the circumstances imposed a real obligation on the Corporation to take immediate action against the secondhand smoke emanating from Mr. Amlani’s apartment.

[51] In my view, Mr. Fine overstates the health and safety concern. While I am sensitive to the right of other unitholders to be free from the smell of smoke, to characterize the matter as one of life and death as Mr. Fine suggests, belies the Corporation’s own the behaviour. Recall that in 2015, the Corporation seemed to have fixed the problem by taking minor remedial steps. In April 2017, when new complaints arose, the Corporation merely suggested that Mr. Amlani be “circumspect” while smoking in his apartment. In addition, even after the Corporation passed a

non-smoking rule, it grandfathered a number of owners and permitted them to continue smoking in their units.

[52] Although Mr. Brearton testifies about the safety levels associated with secondhand tobacco smoke, I have a number of difficulties with that evidence. Mr. Brearton is an engineer, not a medical or safety expert. Mr. Brearton admitted on cross examination that he had no direct knowledge or expertise about safety levels for exposure to smoke but had heard this secondhand in a previous job. Mr. Brearton appears to equate the smell of smoke in a neighbouring unit with the same danger as inhaling secondhand smoke when seated beside a smoker. There may well be a difference between inhaling smoke when seated beside a smoker and smelling smoke after it has been filtered through a number of barriers between apartment units. In essence, the Corporation submits that even if there were no smell dissipating into neighbouring units, there would still be a health hazard because a perfect seal is never achievable and there is no safe level of dissipated smoke. While I do not dismiss that possibility, I am not prepared, without medical evidence, to find that a diminution in the dissipation of smoke to the point that it is no longer noticeable, amounts to a health hazard.

[53] I do not, however, need to determine the health issue because the smell of smoke can still amount to nuisance without it having to cause cancer or other illnesses associated with smoking.

[54] The common law and the Declaration contain prohibitions on nuisance.

[55] The Consolidated Rules and Regulations of the Corporation provide, among other things:

“11. ... No owner shall obstruct or interfere with the rights of other owners, or in any way injure or annoy them, ...

12. Owners... shall not create, or permit the creation of or continuation of any noise or nuisance which, in the opinion of the Board of Directors or the Property Manager, may or does disturb [the] comfort or quiet enjoyment of the property by the owners...”

[56] The Corporation submits that Mr. Amlani smoking in his unit constituted a nuisance to other unit holders.

[57] The test for nuisance was articulated by the Supreme Court of Canada in *Antrim Truck Centre Ltd. v. Ontario (Transportation)* [2013] 1 S.C.R. 594 at para. 19 as requiring that the interference with the owner’s use or enjoyment of property must be both substantial and unreasonable. I find that the smell of smoke from the Amlanis’ apartment could amount to a nuisance if it continued unabated.

[58] In the Corporation’s view a finding of nuisance is decisive because it has an obligation under section 17(3) of the Act to enforce its constating documents including its rules.

[59] In *Carleton Condominium Corp. No. 279 v. Rochon*, [1987] O.J. No. 417, 21 O.A.C. 249 the Court of Appeal highlighted the importance of the constating documents of a condominium corporation:

The declaration, description and bylaws, including the rules, are therefore vital to the integrity of the title acquired by the unit owner. He is not only bound by their terms and provisions, but he is entitled to insist that the other unit owners are similarly bound.

[60] I agree that Mr. Amlani must abide by the constating documents and cannot impose a nuisance on other owners.

[61] In my view, however, although Mr. Amlani's smoking could rise to the level of nuisance if it continued unabated, it did not rise to the level of nuisance in the circumstances as they stood before he moved out.

[62] To constitute a nuisance, the interference with the owner's use or enjoyment of land must be both substantial and unreasonable: *Antrim* at para. 19. The requirement for substantial interference can incorporate a component of frequency and duration: *Antrim* at paragraph 26. The element of unreasonableness relates to the defendant's conduct. Although nuisance does not depend on the quality of a defendant's conduct as negligence does, the nature of the defendant's conduct is not irrelevant. Where the defendant's conduct is neither malicious nor careless, that will be a significant factor in the reasonableness analysis although a finding of reasonable conduct will not necessarily preclude a finding of liability: *Antrim* at paragraph 29. After setting out these principles, in *Antrim*, the Supreme Court of Canada quoted with approval the following extract from *Fleming's The Law of Torts*:

At the same time, evidence that the defendant has taken all possible precaution to avoid harm is not immaterial, because it has a bearing on whether he subjected the plaintiff to an unreasonable interference, and is decisive in those cases where the offensive activity is carried on under statutory authority. . . . [I]n nuisance it is up to the defendant to exculpate himself, once a *prima facie* infringement has been established, for example, by proving that his own use was "natural" and not unreasonable. [Emphasis added.]

[63] *Antrim* therefore demonstrates that the duration of the conduct and the reasonableness of the defendant are relevant considerations in determining whether a nuisance has occurred. In the circumstances of this case, Mr. Amlani sought a dialogue with the Corporation to ensure that the nuisance was eliminated. That conduct was eminently reasonable. It was the Corporation that refused to discuss solutions (see in particular paragraphs 64 to 82 below). The Corporation should not be able to take advantage of its own refusal to work out a solution as a basis for finding that Mr. Amlani's smoking amounted to nuisance. Although I am not unsympathetic to the neighbours who were exposed to the smell of smoke between April and September when Mr. Amlani moved out, the duration of the exposure would have been substantially less had the Corporation sat down with Mr. Amlani in April 2017 to see if a practical solution could be found.

C. The Duty to Negotiate

[64] Just as Mr. Amlani is bound to abide by the condominium's constating documents, so is the Corporation. As set out below, Mr. Amlani did, the Corporation did not.

[65] Paragraph 21.01 of the Corporation's General Bylaw Number Five provides:

21.01 Negotiated Solution

The Corporation and owners shall use their best efforts to resolve any disputes which may arise between them, through good faith negotiations (subject to compliance with the provisions of the Act, declaration, bylaws and rules) and shall resort to mediation, arbitration or legal proceedings only after attempts fail to clarify, resolve and minimize the scope of any issues in dispute.

[66] On the evidence before me, the Corporation did not behave in accordance with this bylaw. Instead of abiding by its bylaws, the Corporation refused to meet with Mr. Amlani despite his request to do so.

[67] When complaints revived in 2017, the Corporation asked Mr. Amlani to be "circumspect" when smoking in his unit.

[68] The fact that the problem was not solved after asking Mr. Amlani to be "circumspect" comes as no great surprise. Being circumspect can mean different things to different people. Mr. Amlani thought he was being circumspect by smoking in what he believed was a sealed sunroom. Without a dialogue between Mr. Amlani, the Corporation and his neighbours, there would be no way for Mr. Amlani to know whether smoking in the sunroom solved the problem. In the absence of further feedback from the Corporation, it was reasonable for Mr. Amlani to assume that smoking in the sunroom met the Corporation's needs.

[69] If it did not, the more appropriate step for the Corporation would have been to meet with Mr. Amlani, bring a sealing expert into his unit and agree to have Mr. Amlani undertake work to mitigate the migration of smoke smell to the point that it no longer bothered his neighbours.

[70] This was clearly possible. In 2015, the Corporation had in fact paid for remedial work that appears to have fixed the problem, at least until 2017. The remedial work done consisted of minor caulking and weatherstripping to help seal Mr. Amlani's apartment. It comes as no surprise that caulking and weather stripping will deteriorate over time and may require regular maintenance. Even when complaints arose again in 2017, at least one of the complaints noted that the smell was not as bad as it had been in 2015. This suggests that the dissipation of the smell of smoke into neighbouring units could be reduced to a level below that which constitutes a nuisance.

[71] Instead of meeting with Mr. Amlani to discuss solutions, however, the Corporation got its lawyers involved and demanded that Mr. Amlani stop smoking immediately and warned him of enforcement costs. Its position became intractable. For whatever reason, it appears to have become rigid and motivated by an animus towards Mr. Amlani that blinded the Corporation to simple, practical solutions.

[72] In oral argument, the Corporation tried to characterize Mr. Amlani as the intractable one. In my view, the Corporation's submissions in this regard do not fairly reflect the evidence.

[73] The Corporation cites portions of Mr. Amlani's cross-examination transcript to argue that Mr. Amlani insisted on a resolution that would allow him to continue smoking even though he knew that his smoking was a nuisance to his neighbours. What he actually said was that he wanted a resolution that would allow him to continue smoking without harming anyone.

[74] The Corporation also cites an email of September 5, 2017 from Mr. Deo to Mr. Amlani's lawyer in which Mr. Deo asks Mr. Amlani to stop smoking immediately and provide a deposit of \$2,000 for an engineering report to determine if Mr. Amlani's smoke can be prevented from entering the common elements and other units. Mr. Amlani did not pay the \$2,000 deposit. According to the Corporation, Mr. Amlani was merely going through empty motions of cooperation without having any intention of cooperating. I do not agree. The demand for \$2,000 was made after Mr. Deo was told that Mr. Amlani would be moving out on September 7, 2017. Mr. Amlani says he did not pay the deposit because he was uncomfortable forwarding the sum as only a deposit without any written quote, scope of work or without knowing who the expert was.

[75] Given the Corporation's continued refusal to even meet with Mr. Amlani, I can understand his reluctance to pay the deposit. Mr. Amlani had a legitimate interest in ensuring that the Corporation retained someone with a mandate to determine whether practical solutions were possible.

[76] As it turned out Mr. Amlani's concerns were legitimate. When the Corporation did hire an expert, it was not to fix the problem but to determine whether it was possible to encase the unit in a "perfect seal". A perfect seal is not the issue. The issue was whether one could seal the apartment to the point where neighbours were no longer bothered by the smell of smoke.

[77] Finally, the Corporation submits that Mr. Amlani should have simply done the repairs suggested by BSG Group and then tested those repairs. Given that the work was undertaken for the benefit of his neighbours, it was not appropriate to expect Mr. Amlani to undertake the work unilaterally. It was appropriate that his neighbours, through the Board, have input into what steps were taken. This is all the more so given that Mr. Amlani's experts had asked for greater detail about the complaints so that they could tailor solutions to the specific problems. By way of example, it may well be relevant for the service provider to know what units had filed complaints, whether those unit holders noticed the smell of smoke more strongly in some parts of their apartments than others, whether the smell was uniform at all times or whether it varied according to weather or time of day. That information might give greater insight into the locations through which the smoke was seeping into neighbouring units and into whether atmospheric conditions with different air pressure affected the smell. Both experts appear to agree that the migration of smells is affected by air pressure and wind and that an effective solution should take these factors into account.

[78] In my view, it was the Corporation that was the intractable one. Its attitude was best summarized by Mr. Fine in oral argument when, at various points he justified the Corporation's refusal to meet by saying:

- "What really was there to talk about if Mr. Amlani was not going to quit smoking. There was really nothing to talk about."

- “What is there to talk about. His smoking is a health and safety danger. I really doubt his neighbours want to talk about ways he can continue smoking.”
- “No one is interested in talking because he is still smoking. He shows absolutely no contrition.”

[79] There was, however, much to talk about; namely steps that could be taken to diminish the migration of smoke smell into neighbouring units. That would have solved the problem more quickly and cheaply than running up \$25,000 in legal fees would.

[80] When the Corporation refused any discussion, Mr. Amlani requested mediation, again in accordance with the Corporation’s constating documents. The Corporation’s response to this is telling. Mr. Fine described Mr. Amlani as “threatening mediation” and that “underlying the threat of mediation is the fact that Mr. Amlani thinks he has a right to smoke in his unit.” He did have the right to smoke, provided he was not causing a nuisance. The Corporation seemed to view the idea of discussion through mediation or otherwise as a threat rather than a commonsense solution and a requirement of its constating documents.

[81] The Corporation submits that the obligation to negotiate in the bylaws is superseded by the indemnity in the Declaration. In the event of a conflict between the bylaw and the indemnification provision in the Declaration, the Corporation says the Declaration governs.

[82] I disagree. There is no conflict between the Declaration and the bylaws. Not only is it possible to read the obligation to negotiate harmoniously with the duty to indemnify, it is preferable to read them in this way. It is a cardinal rule of construction that courts should prefer interpretations that give each term a meaning over interpretations that negate the utility of one term. A harmonious reading is easily possible. There is first a duty to negotiate. If negotiations fail, then the Corporation may have resort to the indemnity, provided of course that the indemnity applies on its language which, as I have found, it does not.

D. The Business Judgment Rule and Grandfathering

[83] The Corporation submits that its decision not to grandfather Mr. Amlani’s apartment should not be challenged for two reasons.

[84] First, it submits that Mr. Amlani’s situation differed from those of unitholders who were grandfathered because the grandfathered owners were not subject to complaints.

[85] That was not, however, the reason the Board gave for rejecting Mr. Amlani’s application. I note that the letter rejecting Mr. Amlani’s grandfathering claim was written by Mr. Fine’s firm. This was not a situation where a layperson may have expressed imperfectly, the basis on which a decision was made. The basis of the decision was articulated by counsel who specialize in condominium law and who had been involved in the situation for many months. The only reason they gave to reject Mr. Amlani’s grandfathering application was that he was not a resident of the building.

[86] Second, the board submits that its decision on the grandfathering application is protected by the business judgment rule.

[87] The Ontario Court of Appeal has held that the business judgment rule applicable in the context of business corporations is also applicable to condominium corporations: *3716724 Canada Inc. v. Carleton Condominium Corp. No. 375*, 2016 ONCA 650 at para. 51. The business judgment rule holds that board decisions should not be subject to microscopic examination. If the decision was made honestly, prudently, in good faith and on reasonable grounds, it will not be second-guessed by courts. See for example *CW Shareholdings Inc. v. WIC Western International Communications Ltd.* (1998), 39 O.R. (3d) 755.

[88] In my view the Board is not entitled to the protection of the business judgment rule.

[89] The refusal to grandfather Mr. Amlani's apartment because he was no longer a resident is not reasonable. Mr. Amlani was no longer a resident because he acted with consideration towards his neighbours to stop subjecting them to the smell of smoke when the Board refused to discuss solutions to the problem. The Board's refusal to meet with or negotiate with Mr. Amlani was unreasonable. To exercise judgment, the Board must give some consideration to available alternatives. Without speaking to Mr. Amlani or his experts, the Board shut itself off from alternatives. There was no evidence before me to suggest that the Board considered alternatives on its own.

[90] Under the business judgment rule, the Board is presumed to act in in good faith. However, the Board's refusal to meet, refusal to negotiate, retaining an expert to determine if Mr. Amlani's unit could be hermetically sealed rather than to determine if the problem could be diminished to the point of no longer bothering the neighbours and its behaviour in walking out of the mediation for another appointment even though the Corporation unilaterally selected the mediation date lead me to conclude that the Corporation and its Board were not acting in good faith.

E. Oppression

[91] Mr. Amlani seeks relief for oppression. Section 135 (2) of the *Act* provides that a court may make an order to rectify the matter if it determines that the conduct of a condominium corporation, among others, is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant. Under section 135 (3) the court may make any order it deems proper including an order requiring payment of compensation.

[92] The oppression remedy protects a party's reasonable expectations. The failure to meet such an expectation will trigger a remedy where the failure falls within concepts of oppression, unfair prejudice or unfair disregard of a claimant's interests: *BCE Inc., Re*, [2008] 3 S.C.R. 560 at para. 89.

[93] In *Couture v. Toronto Standard Condominium Corp. No. 2187*, 2015 ONSC 7596 at para. 61, however, Myers J. held that a unit owner has a reasonable expectation that a condominium corporation would deal with him or her lawfully, in good faith, in a neighbourly manner commensurate with living in a condominium community, and in accordance with the terms of the constating documents of the condominium corporation. He continued at para. 62 to note that the

imposition of facially invalid liens and the refusal to mediate or arbitrate as required were not reasonable responses by a board seeking to manage the affairs of the corporation reasonably and in good faith. Responses of that nature are burdensome and oppressive.

[94] Mr. Fine distinguishes *Couture* based on the facts of that case which were admittedly more extreme than the ones here. That does not, however, detract from the principles articulated by Myers J. to the effect that a condominium corporation is bound to act in accordance with the terms of its constating documents, in good faith and in a neighbourly manner.

[95] The Corporation also relies on the recent judgment of Justice H. Williams in *Mohamoud v. Carleton Condominium Corporation N. 25*, 2019 ONSC 7127 where Williams J. noted at para. 34-35 that a condominium corporation is not expected to be perfect; it is expected to act reasonably to “strive to achieve the greatest good for the greatest number.” I accept that. I also take into account the Board of a condominium corporation are volunteers without any particular business experience.

[96] I nevertheless conclude that the Corporation has acted oppressively here. As noted above, the Corporation did not behave in accordance with its constating documents by refusing to negotiate in good faith. By refusing to negotiate, the Corporation certainly did not try to achieve “the greatest good for the greatest number.” It did not even ask whether it was possible to accommodate both Mr. Amlani and his neighbours. It simply insisted that Mr. Amlani stop smoking.

[97] I underscore here, that by referring to the duty to negotiate, I do not mean to suggest that a condominium corporation is obliged to compromise with a unit holder, no matter what the circumstances. The precise content of the duty will obviously depend on the circumstances. Here, where it was evident that a simple, practical solution had worked in the past, the duty required the Corporation to explore, in good faith, whether there continued to be a practical solution to the problem. The corporation refused to do so. In so refusing, the Corporation breached its own constating documents and therefore breached the Amlani’s reasonable expectations. It incurred legal fees which it tried to impose on the Amlani’s through a lien that contravened s. 134 of the *Act* and then tried to use the invalid lien to sell their unit. The Corporation’s attempt to sell the Amlani’s unit contrary to the provisions of the *Act* is oppressive, unfairly prejudicial to and unfairly disregards the interests of the Amlanis.

F. Damages

[98] The applicants claim damages of \$50,000.

[99] The Corporation submits that I should not consider damages because the issue was not addressed in the applicants’ factum. Although not addressed in the factum, it was addressed in the initial notice of application, the amended notices of application and in the affidavit of Mr. Amlani.

[100] Given that the Corporation said it was taken by surprise by the damage claim during oral argument, I gave it additional time to make written submissions on the point and allowed the applicants time to reply.

[101] The applicants claim out of pockets expenses of \$32,353. The itemization of that claim and my disposition of each item is set out below:

- (a) \$565 for the BSG report

I disallow this claim. Although I am granting the Amlani's application, I also find that the obligation and cost of mitigating the dissipation the smoke smell from their unit is their responsibility. As a result, they would have had to incur the BSG expense in any event to determine what steps to take to resolve the issue.

- (b) \$988.75 for the applicants' share of the mediator's fees.

I allow this claim. Had the Corporation acted in good faith and in accordance with its bylaws to begin with, a mediation should not have been necessary.

- (c) \$1,800 for truck rental and movers.

I allow this claim. The Corporation objects to this claim because the Amlanis have no receipts for these expenses and because their move was undertaken of their own accord. In my view, a move would not have been necessary had the Corporation acted in good faith as it did in 2015. Although the applicants have no receipts, Mr. Amlani has testified under oath that he paid this amount. The amount appears reasonable.

- (d) \$1,255 on account of common expenses for the month of September 2017.

I allow this claim. The Corporation objects to this payment because owners are obliged to pay common expenses even if they do not reside in the unit. I agree. However, I nevertheless find that the applicants are entitled to compensation for this amount. The amount was for common expenses for the month of September 2017. The applicants could not recover those expenses because of the time it took to refurbish and rent out the unit; steps that were necessary because of the Corporation's conduct.

- (e) \$3,616 in realtor commissions.

I allow this claim. The Corporation objects to payment of this amount on the basis that there is no evidence that the applicants researched any Internet services that allow owners to advertise their own units for rent. While that may be the case, there is no obligation on a unit owner to make use of such services. There is nothing unreasonable about retaining the services of a realtor to rent out one's unit.

- (f) \$400 to clean the unit.

I allow this claim. The Corporation objects to payment of this amount on the basis that the applicants chose to have the unit cleaned and do not have a receipt for the cleaning. It is reasonable for the applicants to have cleaned their unit to prepare it

for rental. While the applicants do not have receipts, Mr. Amlani has sworn that this amount was paid. The amount appears reasonable.

- (g) \$1,620 to repair and paint the entire unit.

I allow this claim. The Corporation objects on the basis that the applicants do not have receipts. As for other expenses above, Mr. Amlani as sworn that they were incurred. Once again, the amount strikes me as reasonable.

- (h) \$508.30 to repair the range and washer.

I disallow this claim. The Corporation objects to paying this amount on the basis that there is no invoice or receipt for such repairs and that Mr. Amlani admitted on cross-examination that the range and washer were working but the tenant wanted to enhance their performance. If there was a performance issue, it would probably relate to an expense that the applicants would have had to incur on their own had they remained in the unit for a longer period of time.

- (i) \$21,600, which the applicants say is the \$800 monthly difference between the \$3,200 rent they received for unit 2802 in the Corporation and the \$4,000 rent they say they could have received had they rented the unit they moved into.¹ The applicants multiply the \$800 per month difference for the 27 months between September 2017 to November 2019.

I disallow this expense. There is no material before me to allow me to demonstrate that the unit into which the applicants moved could be rented out for \$4,000. The only evidence to this effect is a simple statement by Mr. Amlani. While I was content to accept simple statements from Mr. Amlani on issues like moving or painting costs, the difference in rental market value between units is an issue on which I would require something more than a conclusory statement.

[102] The total allowed expenses set out above comes to \$9,679.75. I award that amount as compensation under the oppression remedy because the damages arise out of corporate conduct that I have found to be oppressive.

[103] I decline to award general, exemplary or aggravated damages as the applicants request. To award general damages I would need more evidence of harm suffered than I have before me. With respect to exemplary damages, in my view, the Board having to report to unit holders that they will have to pay the Corporation's legal fees, damages to the Amlanis and possibly the Amlanis legal fees (assuming that costs will follow the event, which I have not yet determined) amounts to

¹ It appears the Amlanis own the apartment into which they moved. There was no evidence before me about when they bought the unit or, if they bought it long ago, what they did with it.

sufficient incentive to this and other boards to behave more reasonably when they encounter issues with residents than the Corporation did.

[104] The Corporation strongly objects to the award of any damages to the applicants. They refer to that possibility as a “travesty of justice”. They remind me that the imposition of any damages is an imposition on the other unit holders.

[105] While I appreciate that the other unit holders in the building will ultimately pay those costs, a damage award is the only way that condominium boards can be restrained from acting contrary to their constating documents or otherwise behaving oppressively. In addition to compensating an aggrieved party, damage awards remind counsel to condominiums and condominium boards themselves that they must take steps to determine whether low cost, practical solutions to problems are available rather than turning every problem into a legal issue. Once more I underscore that this is not intended to tie the hands of condominium boards when faced with recalcitrant unitholders. It is simply to say that where a unitholder is willing to discuss a practical solution and practical solutions appear evident, boards have an obligation to explore those solutions in good faith.

III. Relief Granted

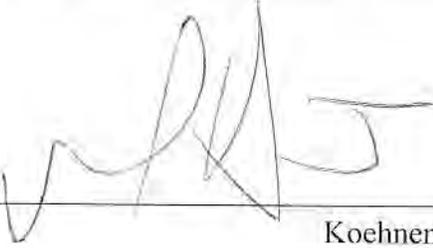
[106] As a result of the foregoing, I order as follows:

- (a) All collection processes pursuant to the condominium lien registered on October 17, 2017 as Instrument No. AT4707363, including any sale proceeding shall be stayed;
- (b) The lien registered as Instrument No. AT4707363 shall be discharged forthwith;
- (c) The legal costs and expenses the Corporation claimed through the lien shall not be imposed on the applicants either directly or indirectly except that, to the extent that the amount reflected in the lien becomes part of the expenses of the Corporation that are paid via the collection of common expenses, the Amlanis will continue to pay their proportionate share of common expenses as reflected in the Declaration;
- (d) The Board’s decision on the Amlani’s grandfathering application is set aside. The Amlanis unit shall be grandfathered under the Corporation’s no smoking rule for Mr. Amlani alone, provided that the dissipation of the smell of smoke from the unit can be reduced to a level at which it does not disturb other residents of the Corporation.
- (e) Before Mr. Amlani resumes smoking in the unit, he shall take such steps as are required to reduce the dissipation of the smell of smoke from the unit to a level at which it does not disturb other residents of the Corporation.

[107] If there are any issues that arise in the implementation of this order, either party may approach me through Judges’ Reception at 361 University Avenue to resolve them.

Costs

[108] Any party that seeks costs arising out of these reasons may make written submissions within 15 days of receipt of the reasons. A responding party will have seven days to respond with five further days for reply.



Koehnen J.

Released: January 13, 2020

CITATION: Amlani v. York Condominium Corporation No. 473, 2020 ONSC 194
COURT FILE NO.: CV-18-598709
DATE: 20200113

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NASIRALLI AMLANI and NASIMBANOO AMLANI

Applicants

– and –

YORK CONDOMINIUM CORPORATION NO. 473

Respondent

REASONS FOR JUDGMENT

Koehnen J.

Released: January 13, 2020

[Amlani v. York Condominium Corp. No. 473, \[2020\] O.J. No. 3633](#)

Ontario Judgments

Ontario Superior Court of Justice

Divisional Court

D.L. Corbett, M.A. Penny and L.G. Favreau JJ.

Heard: June 26, 2020.

Judgment: August 28, 2020.

Divisional Court File No.: 0681/20

[2020] O.J. No. 3633 | 2020 ONSC 5090

Between Nasiralli Amlani and Nasimbanoo Amlani, Applicants/Respondents in Appeal, and York Condominium Corporation No. 473, Respondent/Appellant in Appeal

(54 paras.)

Case Summary

Real property law — Condominiums — Condominium corporation — Rights and obligations — Building management — Appeal by condominium corporation from order invalidating condominium lien registered against respondents' condominium unit, restraining collection proceedings, granting damages to respondents for oppression and awarding costs to respondents dismissed — Respondents smoked in unit which was not prohibited — After complaints about smoke, appellant issued Compliance Demand Notice demanding immediate cessation of smoking in unit and charged legal fees incurred to respondents even after they moved — Expenses were not common expenses — Since no court order authorize lien for those expenses, lien was invalid — Appellant's attempt to sell unit contrary to provisions of Condominium Act was oppressive.

Appeal by the condominium corporation from an order invalidating a condominium lien registered against the respondents' condominium unit, restraining collection and enforcement proceedings, including an attempted sale of the respondents' unit, granting damages to the respondents for oppression and awarding costs to the respondents. The respondents purchased their unit in 2013. The corporation had no bylaw prohibiting smoking in the units. In 2017, after complaints about the smell of smoke emanating from the respondents' unit, the appellant issued a Compliance Demand Notice demanding a full and immediate cessation of smoking in the unit. In April 2018, the appellant passed a non-smoking rule which prohibited smoking in all units. The rule contained a grandfathering provision that allowed smoking residents to apply to the Board for an exemption while they lived in the unit. In March 2018, the appellant served the respondents with a Notice of Intention to Enforce Security stating that the respondents owed the appellant \$25,108, that the appellant had placed a lien on their unit and would enforce the lien by selling the unit. The entire amount of the lien reflected the legal fees of the Corporation's lawyers incurred after the respondents moved out of the unit.

HELD: Appeal dismissed.

The appellant could not use a s. 85 lien to collect legal fees incurred in a s. 134 compliance matter without first having obtained a compliance order from the Court. The expenses at issue were not common expenses but fell under s. 134 of the Condominium Act. Since there was no Court order authorizing a lien for those expenses, he found that the lien was invalid and must be discharged. The application judge committed no palpable and

overriding error in concluding that the appellant's indemnity provision did not apply because the alleged breach to the rules did not constitute an act to or with respect to the common elements. The appellant's attempt to sell the unit contrary to the provisions of the Act was oppressive, unfairly prejudicial to and unfairly disregarded the interests of the respondents. The judge's conclusion that the appellant refused to negotiate or discuss the matter was well grounded in the evidentiary record.

Statutes, Regulations and Rules Cited:

Condominium Act, s. 7(5), s. 85, s. 134, s. 134(5), s. 135(2)

Smoke Free Ontario Act,

Counsel

Rodrigue Escayola, for the Applicants/Respondents.

Jonathan Fine and Jennifer Malchuk, for the Respondent/Appellant.

The judgment of the Court was delivered by

M.A. PENNY J.

Overview and Issues

1 Following the appellant's submissions on June 26, 2020, this Court dismissed the appeal with reasons to follow. These are those reasons.

2 This is an appeal by a condominium corporation from the order of Koehnen J. dated January 13, 2020. In his Order, Koehnen J.:

- (a) invalidated a condominium lien registered against the Respondents' condominium unit;
- (b) restrained collection/enforcement proceedings, including an attempted sale of the Respondents' unit;
- (c) granted damages to the Respondents for oppression; and
- (d) awarded costs to the Respondents.

3 The Corporation advanced numerous grounds of appeal. The Corporation asserted that the application judge erred:

- (1) in concluding that the Corporation's lien was invalid;

- (2) in concluding that the Corporation's indemnity provision did not allow for the charging of its legal fees;
- (3) in finding that the conduct of the Corporation was oppressive (and awarding damages);
- (4) in finding that the Corporation refused to negotiate in good faith with the Respondents;
- (5) in concluding that the emanation of the odour of cigarette smoke from the Respondents' unit did not constitute a nuisance; and
- (6) in awarding costs to the Respondents.

Standard of Review

4 The standard of review on this appeal is not in dispute. The standard of review on appeal is correctness on questions of law; palpable and overriding error on findings of fact; and palpable and overriding error on mixed questions of fact and law unless it is clear that the judge made an extricable error of law or principle, in which case the standard changes to one of correctness, *Housen v. Nikolaisen*, [2002 SCC 33](#).

Background

5 At the conclusion of a two-day hearing, the application judge reached the following conclusions of fact:

- * In 2013, the Respondents, Mr. and Mrs. Amlani were looking to purchase a condominium unit. Given that Mr. Amlani had smoked for 56 years, he wanted to ensure that the Corporation had no rules against smoking. After receiving confirmation that there were no rules against smoking, the Amlanis purchased the unit and began living there in December 2013.
- * In 2015, some of the Respondent's neighbours complained that the smell of smoke was filtering from the Amlanis' unit into their own apartments. The Corporation hired a contractor to seal certain openings in the applicants' unit to prevent the smell from escaping. The Corporation absorbed the cost of doing so. The work appeared to have been successful and complaints about Mr. Amlani's smoking stopped.
- * In March 2017, new complaints arose about the smell of smoke leaving Mr. Amlani's unit. The Corporation wrote Mr. Amlani on April 27, 2017 stating:

"... you are requested to be circumspect with respect to your smoking and/or refrain from smoking in order to protect other residents."

In response, Mr. Amlani restricted his smoking in the unit to an enclosed sunroom which he believed was sealed. He also installed an air filter in the sunroom.

- * The next communication from the Corporation to Mr. Amlani was a letter from the Corporation's lawyers, Fine & Deo dated July 6, 2017. After stating that Mr. Amlani's smoking was a danger and a nuisance it concluded:

"The Board of YCC 473 hereby demands that you immediately cease and desist from smoking in your unit. Please confirm to me, in writing, on or before July 20, 2017 that you are willing to cooperate and comply."

The letter also warned Mr. Amlani that he would be liable for the Corporation's costs of enforcing his compliance.

- * Mr. Amlani responded with a letter from his own lawyer which noted that, in the past, Mr. Amlani had cooperated in addressing any inconvenience his smoking caused and sought a dialogue with the Corporation to resolve the issue. On July 20, 2017 Mr. Amlani wrote his own letter to the property manager asking for a meeting with the Corporation's Board of Directors and the residents of the 28th floor to "discuss openly, without prejudice in a transparent manner, to sincerely attempt

to resolve the matter at hand." Mr. Amlani also asked the property manager for relevant application forms that may be required to refer the issue to mediation. On August 11, 2017, Mr. Amlani's lawyer indicated that he was prepared to hire an engineering company, at his own cost if necessary, to prepare a report to determine if the problem could be solved. He also indicated that he would be prepared to use any company the Corporation could recommend for this purpose.

- * On August 25, 2017, Mr. Deo wrote to Mr. Amlani's lawyer indicating that he had left two messages that week had not heard back from him, asked that Mr. Amlani immediately stop smoking in the unit until the matter could be resolved and asked Mr. Amlani for \$2,000 as an interim deposit for the engineering report that the Corporation would be commissioning.
- * On September 1, 2017 Mr. Amlani advised Fine & Deo that, on September 7, 2007, he would be moving out until the issue was resolved. In addition, he indicated that he had spoken to three professionals who said that there were simple solutions to the problem but that it would help them to get more details about the specific complaints so that they could design solutions tailored to those complaints. Mr. Amlani therefore asked for redacted copies of the complaint letters to enable the service providers to devise a solution more closely tailored to the circumstances. [They were not provided].
- * On September 6, 2017, Mr. Amlani had The BSG Group inspect his apartment to propose solutions. BSG proposed some relatively inexpensive solutions including a perimeter gasket around the entry door to the apartment and better sealing of openings through which smoke smell could migrate such as light fixtures, light switches and water pipes.
- * As promised, the Amlanis vacated their unit on September 7, 2017 and rented it to a tenant. They included a no smoking clause in the lease even though the Corporation did not have a rule against smoking.
- * On September 14, 2017 the Corporation issued a Compliance Demand Notice addressed to Mr. Amlani demanding a full and immediate cessation of smoking in the unit by September 22, 2017, even though Mr. Amlani had already moved out.
- * On November 6, 2017 Mr. Amlani requested mediation. On the same day he sent the Corporation a copy of the BSG report.
- * In response to the request for mediation, the Corporation appointed a mediator and set the mediation date, both without consulting Mr. Amlani. Mr. Amlani nevertheless cooperated and participated in the mediation. Part way through the mediation, counsel and the representative Board member indicated that they had another appointment and left.
- * The Corporation then sought to impose the entire mediation cost on Mr. Amlani, even though the Corporation's by-laws provide that mediation costs should be shared.
- * In April 2018, the Corporation passed a non-smoking rule which prohibited smoking in all units. The rule contained a grandfathering provision that allowed smoking residents to apply to the Board for an exemption while they lived in the unit.
- * Mr. Amlani applied under the grandfathering provision. The Corporation rejected his request because Mr. Amlani was no longer living in the unit.
- * The Corporation hired its own expert for this proceeding, Mr. Philip Brearton, of Cion Coulter. In his report, Mr. Brearton states:

"Further effort to seal Suite 2802 is not recommended because this is an unrealistic goal. There is no lower threshold for safe exposure to tobacco smoke consequently, to be "smoke-free", a perfect seal in Suite 2802 must be achieved at all times. Beyond the challenge of managing the opening of the unit's entrance door, achieving a "perfect seal" is not possible with current building materials and construction practices."

- * On cross-examination, Mr. Brearton admitted that steps could be taken to decrease the smell of smoke in neighbouring units but his mandate did not include proposing or assessing such steps. He was asked only to opine about whether a "perfect seal" was possible.
- * Mr. Brearton admitted on cross-examination that there are "relatively easy techniques" to seal openings through which the smell of smoke can migrate. These include sealing gaps in floors, walls, doors, ductwork or between walls and pipes.
- * In March 2018, the Corporation served the Amlanis with a Notice of Intention to Enforce Security. It stated that the Amlanis owe the Corporation \$25,108.77, that the Corporation has placed a lien on the unit and that the Corporation would enforce the lien by selling the Amlani's apartment. This prompted Mr. and Mrs. Amlani to bring this application to restrain the sale.
- * The entire amount of the lien reflects the legal fees of the Corporation's lawyers, Fine & Deo. The last demand for payment of legal fees that the Corporation sent Mr. Amlani before he moved out was sent on August 23, 2017 and was for \$863.99. While Fine & Deo docketed an additional \$1,500 more before Mr. Amlani actually moved out, it is clear that the vast majority of the legal fees being claimed arose after Mr. Amlani vacated his unit.

Analysis of Issues

6 The central issue in this case revolves around the interpretation of ss. 85 and 134 of the *Condominium Act*. Ultimately, the central question is whether the Corporation could use a s. 85 lien to collect legal fees incurred in a s. 134 compliance matter without first having obtained a compliance order from the Court.

7 Secondary questions include whether the indemnity provision in Article XI of the Corporation's Declaration applied to the Corporation's claim for legal costs and whether the conduct of the Corporation in relation to Mr. Almani was oppressive.

8 Tertiary issues, which are inter-related with the three main issues, include whether the smell of cigarette smoke constituted a nuisance, whether there was evidence to support the application judge's conclusion that the Corporation did not negotiate in good faith and the application judge's award of costs.

Validity of the Corporation's Lien

9 Section 85 of the Act allows for the automatic registration of a lien in respect of common expenses. Section 134 of the Act provides that expenses in respect of compliance and enforcement can only be the subject of a lien if the Corporation has obtained a compliance order from the Court. The application judge found that the expenses at issue were not common expenses but fell under s. 134 of the Act. Since there was no Court order authorizing a lien for those expenses, he found that the lien was invalid and must be discharged.

10 The Appellant argues that the application judge misapprehended the meaning and inter-relationship of these sections and disregarded the definition of "common expense" in the Act, which lead him to the wrong conclusion.

11 Section 85 of the Act provides:

85 (1) If an owner defaults in the obligation to contribute to the common expenses payable for the owner's unit, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount. [Emphasis added]

12 Section 134 of the Act provides, in relevant part:

134 (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit *may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement* between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

(5) *If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit* and the corporation may specify a time for payment by the owner of the unit. [Emphasis added]

13 "Common expenses" are defined to mean "the expenses related to the performance of the objects and duties of a corporation and all expenses specified as common expenses in this Act, the regulations or in a declaration".

14 The essential reasoning of the application judge on this point appears in paras. 34 and 35 of his decision:

[34] It is one thing to allow the corporation to enforce, by way of lien, common expenses that are applicable to all unit holders and that a majority of unitholders have approved. It is entirely another to allow a condominium corporation the unfettered, unilateral right to impose whatever costs it wants on a unitholder, refer to them as common expenses and thereby acquire the right to sell the unitholder's apartment.

[35] I am strengthened in this view by other provisions in the Act that specifically allow a condominium corporation to add certain types of costs unique to a single owner to the common expenses of the particular unit holder without a court order. By way of example, sections 92(1) and (4) provide that a corporation can carry out certain repairs if an owner fails to do so and can add the cost of such repairs to the owner's common expenses. In a similar vein, section 105(2) provides that if an owner causes damage, the lesser of the cost of repair or the corporation's insurance deductible may added to the owner's common expenses. Legal fees and enforcement costs do not fall into these categories.

15 I can find no error in the application judge's interpretation of these provisions of the Act. His interpretation is correct. There are numerous sections allowing condominium corporations to charge back expenses to an owner and to have a lien if the owner defaults, without the requirement of an order. However, as expressly provided, s. 134 is not one of them.

16 Furthermore, there was ample evidence in the record, cited by the application judge in his reasons, to support his conclusions on the application of these provisions to the facts of this case.

17 I therefore give no effect to this ground of appeal.

Applicability of the Indemnity Provision

18 Article XI of the appellant's Declaration provides in relevant part:

Each owner, shall indemnify and save harmless the Corporation from and against any ...cost, ...or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such owner, ... to or with respect to the common elements and/ or all other units ... All payments pursuant to this clause are deemed to be additional contributions toward the common expenses and recoverable as such.

19 The Appellant argues that the application judge committed a palpable and overriding error in concluding that the appellant's indemnity provision did not apply because the alleged breach to the rules did not constitute an act to or with respect to the common elements.

20 The appellant's argument is three-pronged. First, it argues that the application judge held that "there was no act

of Mr. Amlani to the common elements ignoring the key words in Article XI 'or with respect to the common elements". It then goes on to argue that Mr. Amlani's smoking in his unit constituted an act "with respect to the common elements". Finally, it argues that the appellant's interpretation of the indemnity provision was reasonable.

21 The application judge started his analysis on this point by quoting the indemnity provision, including the words "to or with respect to the common elements" (emphasis added). He did not, therefore, "ignore" any words of the Declaration. The application judge made no error in concluding that the indemnity applies only with respect to costs the Corporation incurs arising out of acts by owners 'to or with respect to the common elements and/or all other units'.

22 There was ample evidence to support the conclusion that there was no act of Mr. Amlani to or with respect to the common elements. The Appellant argues that the *Smoke Free Ontario Act* prohibits smoking in the hallways and that smoking in the common element hallways or smoking in a unit "so that it fills the hallway with cigarette smoke and/or cigarette smell" is an act with respect to the common elements.

23 No one smoked in the hallway and there was no evidence that any smoking in the unit "filled the hallway with cigarette smoke and/or cigarette smell".

24 In any event, I agree with counsel for the respondent when he submits that the air space in the hallway does not form part of the common elements and is not meant to be captured by the language of the indemnity clause. The Act defines "common elements" as the property except the units. "Property" is defined as the "land, including the building on it ...". An act to or with respect to common elements therefore is a reference to the physical component of the common elements. There is no allegation of harm or damage to the land or the building.

25 Further, the application judges' conclusion, that the costs the Corporation incurred after Mr. Amlani left his unit could not possibly arise out of acts by Mr. Amlani to the common elements because he was out of the building and was not engaging in any acts with respect to the common elements or otherwise, was entirely consistent with the evidence.

26 The appellant argues that its indemnity provision allows it to simply charge back any and all costs incurred in its attempt to secure compliance, without the requirement to first obtain a compliance order.

27 Section 7(5) of the Act provides that a declaration cannot be inconsistent with the Act. The application judge found, the interpretation of Article XI advanced by the Corporation contravenes s. 134 (5) of the Act because the costs it claimed related to compliance and enforcement costs and were not embodied in a court order. An interpretation that contravenes a statutory provision, he found, is, by definition, unreasonable. The legal accounts for which the corporation claimed indemnity described the services as relating to the "enforcement of the Corporation's Declaration and Rules" and not as relating to the protection of any common elements.

28 In the circumstances, there are no palpable and overriding errors to justify overturning the finding that the appellant could not rely upon its indemnity provision to charge Mr. Almani with the legal fees it was seeking.

The Finding of Oppression

29 The application judge correctly stated the legal test for oppression under s. 135(2) of the Act and applied the leading case, *BCE Inc., Re*, [2008 SCC 69](#), as well as several recent condominium oppression cases. The application of the oppression remedy is based on findings of fact and the exercise of discretion by the Court.

30 After enunciating the test and evaluating the evidence before him, the application judge concluded that "The Corporation's attempt to sell the Amlani's unit contrary to the provisions of the Act is oppressive, unfairly prejudicial to and unfairly disregards the interests of the Amlanis." In so concluding, the application judge made the following findings of fact and mixed fact and law:

- (a) the Corporation did not behave in accordance with its constating documents by refusing to negotiate in good faith;
- (b) the Corporation did not try and achieve "the greatest good for the greatest number." The Corporation did not even ask whether it was possible to accommodate both Mr. Amlani and his neighbours;
- (c) it was evident that a simple, practical solution had worked in the past, and the duty to negotiate required the Corporation to explore, in good faith, whether there continued to be a practical solution. It refused to do so; and
- (d) Mr. Amlani's reasonable expectations were defeated by the Corporation breaching its own constating documents (i.e. the duty to negotiate).

31 The application judge also exercised his discretion when crafting the remedy under s.135(3): "the court may make any order it deems proper including an order requiring payment of compensation." Courts have held that s. 135(3) should be given a broad and flexible interpretation that will give effect to the remedy it created. Stakeholders may apply to protect their legitimate expectations from conduct that is unlawful or without authority, and even from conduct that may be technically authorized and ostensibly legal.

32 There is no basis to interfere with the application judge's finding of oppression.

Negotiation in Good Faith

33 The appellant's by-laws impose on the Corporation and its owners the obligation to "use their best efforts to resolve any disputes which may arise between them, through good faith negotiations... and shall resort to mediation, arbitration or legal proceedings only after attempts fail to clarify, resolve and minimize the scope of any issues in dispute". After quoting this provision of the by-laws, the application judge concluded, on the evidence, that "the Corporation did not behave in accordance with this by-law. Instead of abiding by its by-laws, the Corporation refused to meet with Mr. Amlani despite his request to do so."

This is the clearest of findings of fact and is deserving of deference.

34 The evidence shows that as early as July 20, 2017, Mr. Amlani asked for a meeting with the Board of Directors and his neighbours. The evidence shows that the Appellant refused to even meet with the Respondents until the aborted mediation.

35 The appellant now suggests on appeal that "the parties carried on discussion and negotiations, primarily through their legal representatives" who "agreed that the mutual goal was to ... render the Respondent's Unit *airtight*" There are two fundamental problems with this theory.

36 First, it is not supported by any evidence. Despite the July 20 request to meet, the appellant refused to negotiate, refused to meet, and refused to consider low-cost solutions as they had in 2015. On this, the application judge concluded:

[71] Instead of meeting with Mr. Amlani to discuss solutions, however, the Corporation got its lawyers involved and demanded that Mr. Amlani stop smoking immediately and warned him of enforcement costs. Its position became intractable. For whatever reason, it appears to have become rigid and motivated by an animus towards Mr. Amlani that blinded the Corporation to simple, practical solutions.

37 Second, this new theory is, in fact, the exact opposite of the position pleaded at first instance. On this very question, the application judge summarized the appellant's oral argument as follows:

[78] In my view, it was the Corporation that was the intractable one. Its attitude was best summarized by Mr. Fine in oral argument when, at various points he justified the Corporation's refusal to meet by saying:

- "What really was there to talk about if Mr. Amlani was not going to quit smoking. There was really nothing to talk about."
- "What is there to talk about. His smoking is a health and safety danger. I really doubt his neighbours want to talk about ways he can continue smoking."
- "No one is interested in talking because he is still smoking. He shows absolutely no contrition."

38 The conclusion that the appellant refused to negotiate or discuss the matter is well grounded in the evidentiary record and in counsel's own submissions. There is no basis to interfere with these findings of the application judge.

Nuisance

39 The appellant argues that the application judge erred when he concluded that "Mr. Amlani's smoking was not a nuisance because the appellant 'refused to discuss solutions'". This characterization is an unfair simplification of a long and thoughtful analysis of the evidence and the cited legal authorities contained in the decision of the application judge.

40 The application judge found that neighbours were only "exposed to the smell of smoke between April and September 2017, when Mr. Amlani moved out." He then reviewed the many volumes of evidence of the alleged nuisance filed by the appellant, and made findings of mixed fact and law that what existed during the relevant timeframe did not amount to nuisance either at common law or under a reasonable interpretation of the appellant's Rules.

41 The application judge disagreed with the appellant's suggestion that there was a "prima facie" nuisance. He wrote, "although Mr. Amlani's smoking could rise to the level of nuisance if it continued unabated, it did not rise to the level of nuisance in the circumstances as they stood before he moved out."

42 This is a finding of mixed fact and law, subject to the palpable and overriding error standard of review.

43 The application judge applied *Antrim Truck Centre Ltd. V. Ontario (Transportation)*, [2013 SCC 13](#), the seminal case on nuisance, to the facts, and concluded that there was no substantial and unreasonable interference with the owners' use or enjoyment of their property.

44 In so doing, the application judge assessed 1) the evidence of the act and its effects; 2) the duration of that act; and 3) the unreasonableness of the Corporation's conduct in prolonging the situation: "the duration of the exposure would have been substantially less had the Corporation sat down with Mr. Amlani in April 2017 to see if a practical solution could be found."

45 The Amlanis lived in unit 2802. During the relevant months of April to August 2017, there were no complaints from units 2801, 2803, 2804, 2806, 2807, or 2902, being the units on the same floor as, and above, the Amlanis' unit. During those same months, there were only two units that made complaints: unit 2808 and 2805, who both had a history of unfounded complaints.

46 Further, the Corporation submitted no evidence that the dissipated smoke alleged to be travelling from the Amlanis' unit was causing a health and safety risk to any of the other residents. Accordingly, the application judge found:

In essence, the Corporation submits that even if there were no smell dissipating into neighbouring units, there would still be a health hazard because a perfect seal is never achievable and there is no safe level of dissipated smoke. While I do not dismiss that possibility, I am not prepared, without medical evidence, to find that a diminution in the dissipation of smoke to the point that it is no longer noticeable, amounts to a health hazard.

47 There was, by definition, no nuisance created by the Amlanis after September 7, 2017 as they had completely vacated their unit. And yet, the Corporation charged over \$25,000 in legal fees to seek "compliance" after September 7.

48 The application judge evaluated the evidence before him, and concluded:

While I am sensitive to the right of other unitholders to be free from the smell of smoke, to characterize the matter as one of life and death as Mr. Fine suggests, belies the Corporation's own the behaviour. Recall that in 2015, the Corporation seemed to have fixed the problem by taking minor remedial steps. In April 2017, when new complaints arose, the Corporation merely suggested that Mr. Amlani be "circumspect" while smoking in his apartment. In addition, even after the Corporation passed a non-smoking rule, it grandfathered a number of owners and permitted them to continue smoking in their units.

49 I can find no basis upon which to interfere with this conclusion.

Costs

50 Given that the substance of the appeal has been dismissed, leave is required to appeal the issue of costs separately. I would not grant leave but, even if leave was granted, I see no merit to the cost appeal.

51 This Court does not disturb discretionary awards of costs absent an error in principle. The test is not whether an appellate court would have made the same costs order, but whether the application judge committed an error in principle or whether he was clearly wrong.

52 The application judge concluded that elevated costs were appropriate as the appellant had engaged in conduct that is "worthy of sanction", as discussed throughout his reasons. After making adjustments to the costs sought, the application judge determined, in his discretion, that substantial indemnity on an elevated scale was appropriate, given the pre-litigation conduct, the three settlement offers made by the Amlanis (all of which were beaten), and the other relevant factors under Rule 57:

"in a nutshell, the entire proceeding could have been avoided had the [appellant] acted reasonably" and that

"Parties who ignore cost-effective solutions in favour of litigation must pay the price if they fail in litigation".

53 This conclusion was, again, amply supported by the evidence. There is no basis upon which to interfere with the exercise of the application judge's discretion on the question of costs.

Conclusion

54 The decision of the application judge is lengthy, thoughtful and carefully reasoned. His decision is amply supported by the evidence. There is no basis upon which to interfere with the result that he reached. The appeal is dismissed with costs payable by the appellant to the respondents in the agreed amount of \$30,000.

M.A. PENNY J.

D.L. CORBETT J.:— I agree.

L.G. FAVREAU J.:— I agree.

End of Document



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Limiting Distance Agreements

ALEX FOUNDOS

1



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What is a Limiting Distance Agreement? What is its purpose? Why is it required?

2



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Limiting Distance Agreements and the Ontario Building Code

3



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Subsection 3.2.3.1(11) of the Building Code states that the required limiting distance can be measured beyond the property line that is not the centre line of a street, lane or public throughfare if,

- a) the owners of the properties on which the limiting distance is measured and the municipality enter into an agreement in which such owner agrees that,
 - i) each owner covenants that, for the benefit of land owned by the other covenantors, the owner will not construct a building on his or her property unless the limiting distance for exposing building faces in respect of the proposed construction is measured in accordance with the agreement;
 - ii) the covenants contained in the agreement are intended to run with the lands, and the agreement shall be binding on the parties and their respective heirs, executors, administrators, successors and assigns;
 - iii) the agreement shall not be amended or deleted from title without the consent of the municipality; and
 - iv) they will comply with such other conditions as the municipality considers necessary, including indemnification of the municipality by the other parties, and
- b) The agreement is registered against the title to the properties to which it applies (we will talk about this a little later).

4



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Section 3.2.3.1 of the Ontario Building Code includes several tables and charts that set out the area of unprotected openings and the applicable limiting distance depending on the type of use of the building or structure. Each building group, residential, retail, etc., will require different limiting distances. The higher the occupancy rate, the greater the limiting distance.

5



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What is the difference between an exposed building face and an unprotected opening?

6



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Who initiates the Limiting Distance Agreement process? How does a developer know that one is required?

7



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What is the Surveyor's role, the Developer's role and the Lawyer's role in finalizing the Limiting Distance Agreement?

8



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Compartment Size and Wall Location Diagrams

9



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10



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LEVEL 13



LEVEL 7 - LEVEL 12

11



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LEVEL 2 - LEVEL 6

12



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What are some issues that can arise when negotiating a Limiting Distance Agreement?

15



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General provisions of a Limiting Distance Agreement

16



LANDPRO
CONFERENCE
2021

PANEL:

SHARED FACILITIES SPOTLIGHT

12:45 P.M. - 01:45 P.M.

Julian McNabb, Vice President, Melbourne Property Management

Bonnie Chan, Co-founder and Principal, ZO1

Bram Atlin, Principal, Smith + Andersen

Eduardo Linhares, Project Director, Krcmar Surveyors

Craig Garbe, Partner, Bennett Jones

Daniel Miller, Director, Metering Services, PowerStream Energy

Audrey Loeb, Partner, Shibley Righton LLP

Leor Margulies, Partner, Robins Appleby LLP

05

PANEL MEMBERS

SHARED FACILITIES SPOTLIGHT PANEL

moderated by Julian McNabb.



**JULIAN
MCNABB**

Vice President
Melbourne
Property Management



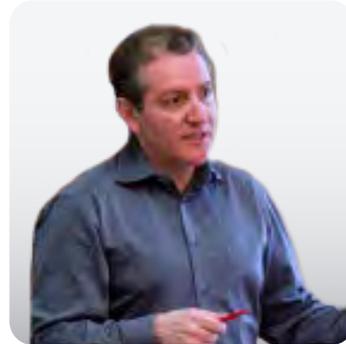
**BONNIE
CHAN**

Co-founder
& Principal
ZO1



**BRAM
ATLIN**

Principal
Smith + Andersen



**EDUARDO
LINHARES**

Project Director
Krcmar Surveyors



**CRAIG
GARBE**

Partner
Bennett Jones



**DANIEL
MILLER**

Director,
Metering Services
PowerStream
Energy Services



**AUDREY
LOEB**

Partner
Shibley Righton LLP



**LEOR
MARGULIES**

Partner
Robins Appleby LLP

Why Shared Facilities Agreement (SFA) becoming a topic nowadays:

Mar 3, 2021

The diagram illustrates the transition from traditional housing to modern mixed-use development. On the left, a grid of housing types is shown, with a red circle highlighting 'Single Family' and another red circle highlighting 'Highrise'. A red arrow points from the single-family area towards the high-rise area. Below this, a 3D bar chart shows various colored blocks representing different building types. A red circle labeled 'Single zoned' is positioned below the chart, with a red arrow pointing towards a larger red circle labeled 'Mixed Use' on the right. The 'Mixed Use' circle is also connected to a 3D model of a multi-story building with different colored volumes representing different uses.

<https://www.canadianarchitect.com/editorial-finding-the-missing-middle/>

<https://www.gensler.com/research-insight/blog/cities-and-public-health-our-new-challenge-in-urban-planning>

LANDPRO CONFERENCE ZO1

1

Ownership Components

Mar 3, 2021

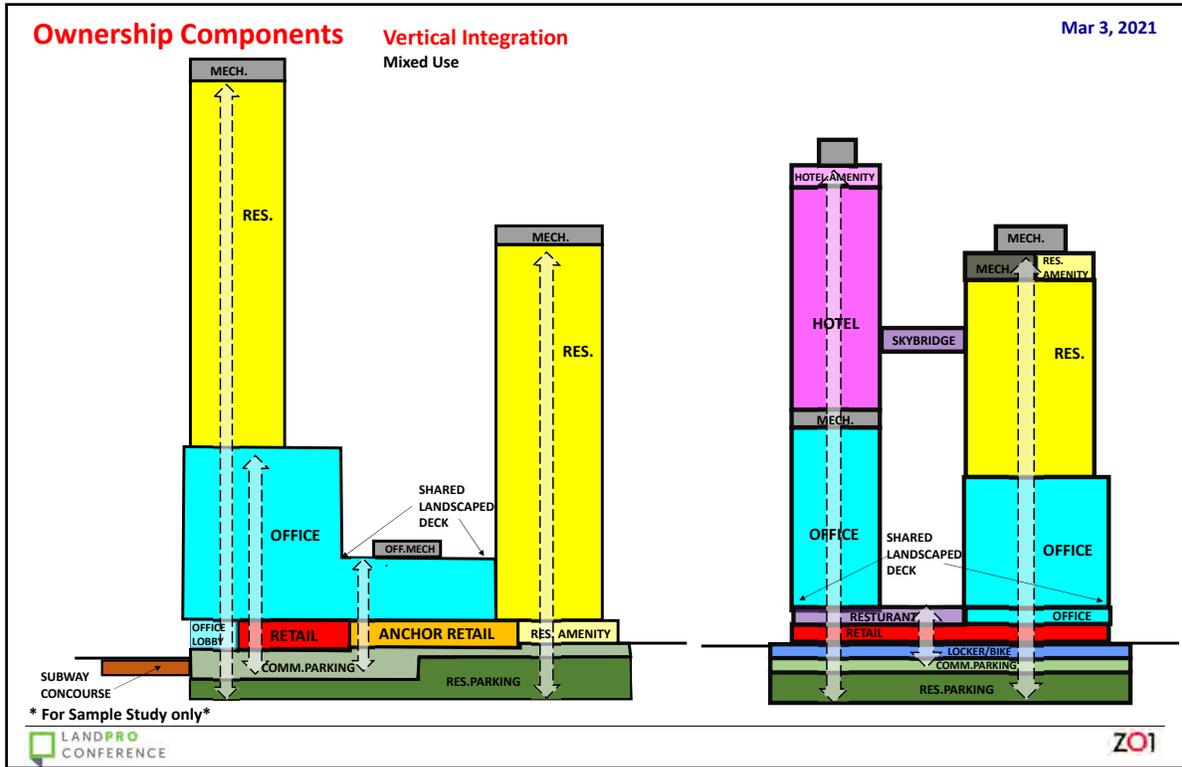
Horizontal Integration Mixed Use

The diagram shows a site plan for horizontal integration. On the left, a yellow 'MALL' is connected to an 'OFFICE/HOTEL' and four 'CONDO' units (CONDO 1-4). 'SHARED ACCESS' is indicated by dashed arrows between the mall and the other buildings. 'SHARED LANDSCAPE' areas are shown between the mall and the condos. On the right, a more detailed site plan shows 'ANCHOR RETAIL', 'HOTEL/OFFICE', 'RETAIL', and 'CONDO 1-4' units. It includes 'SHARED VEHICULAR ACCESS' and 'SHARED COMMERCIAL PARKING' areas. 'SERV.' (service) areas are also marked throughout the plan.

*** For Sample Study only***

LANDPRO CONFERENCE ZO1

2



3

Shared Facilities Area

Mar 3, 2021

Auxiliary Front of House

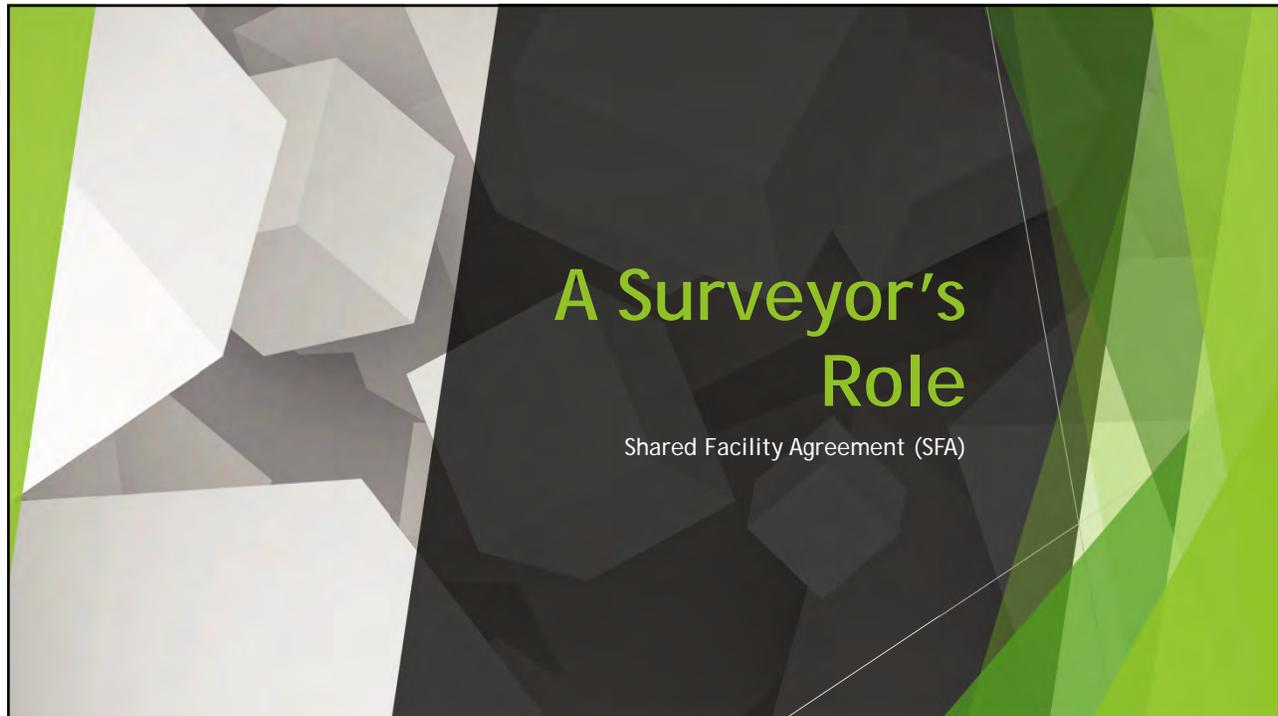
- Communal arrival lobby
- Landscape deck
- Shared Drop off
- Elevators lobbies
- Pedestrian promenade
- Parcel rooms
- Shared commercial/Visitor parking
- Access driveway
- Bridge between different ownership components
- Subway concourse
- Shared Amenities such as gym, pool, party rooms, etc

Back of House

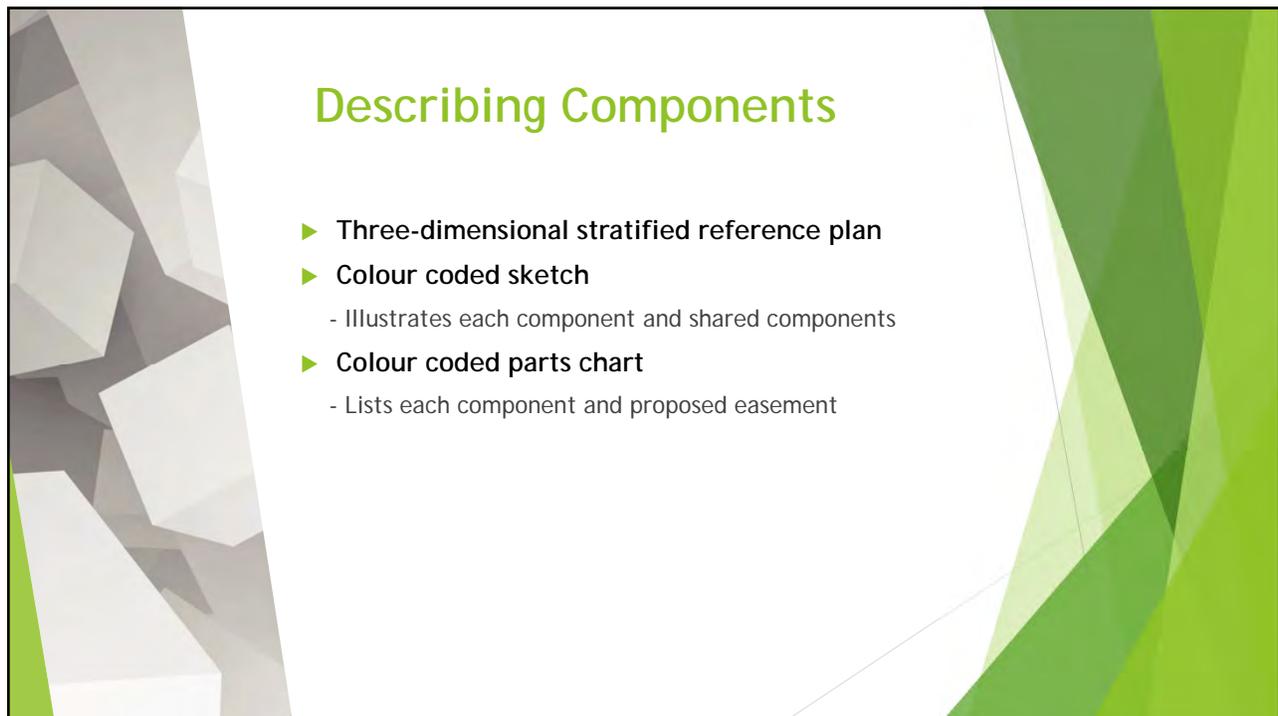
- Mechanical plantrooms
- Mechanical system (storm, water supply, fire protection, HVAC, drainage etc)
- Electrical system
- Security system
- Loading bays
- Garbage rooms
- Exit stairs
- Service corridors
- Air shafts and services shafts, etc

LANDPRO CONFERENCE ZOI

4

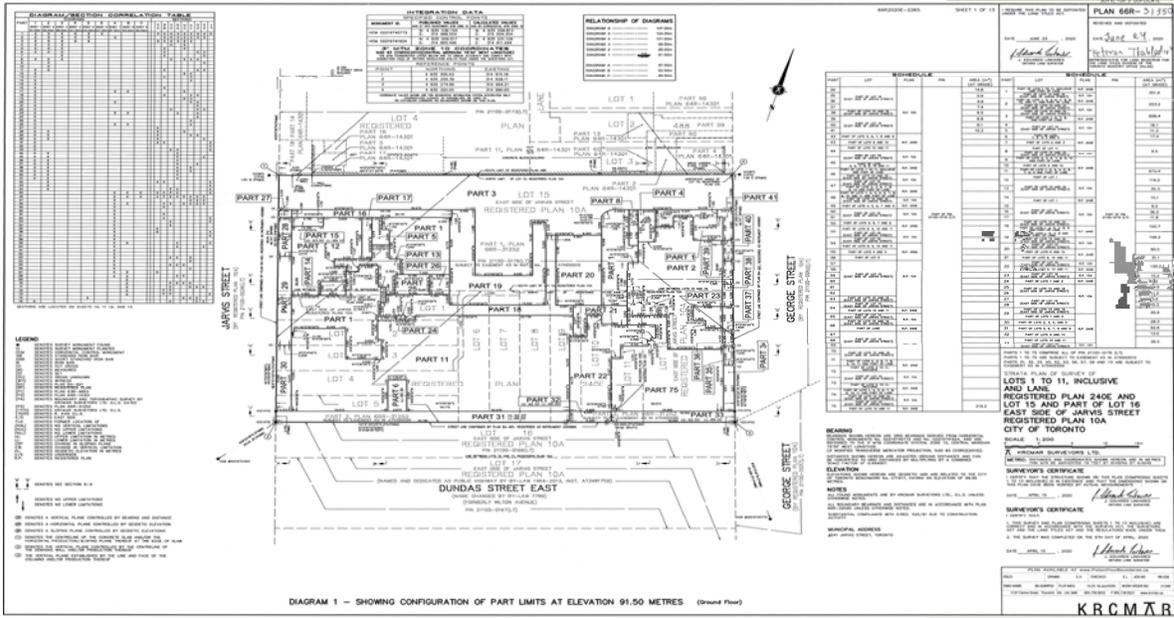


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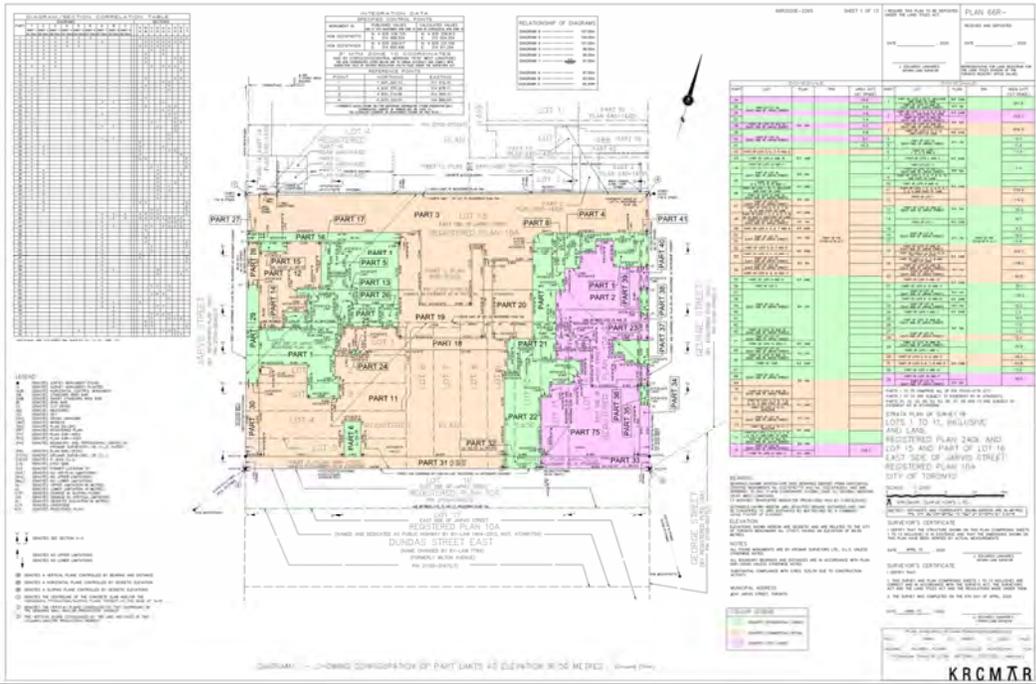
2

Three-dimensional Stratified Reference Plan



3

Colour Coded Sketch



4



5

99-028RP03 - (241 Jarvis Street and 200 Dundas Street East)
Dundas Square Gardens Project
 Lots 1 to 11, inclusive, and Lane, Registered Plan 240E
 Lot 15 and Part of Lot 16, East Side of Jarvis Street, Registered Plan 10A
 City of Toronto
 All of PIN 21100-0176(LT)
 PARTS 1 to 75 inclusive are subject to easement as in Inst. AT4850010
 PARTS 31, 32, 33, 45, 52, 53, 56, 57, 59 and 73 are subject to easement as in Inst. AT5405599

EASEMENTS AND PARTS LISTING - 66R-31350
Residential Lands: PARTS 1, 4 to 10 inclusive, 13 to 17 inclusive, 21 to 27 inclusive, 29, 32, 35, 37, 39, 41, 43 to 46 inclusive, 55 to 68 inclusive and 74
Retail/Commercial Lands: PARTS 3, 11, 12, 18, 19, 20, 28, 30, 31, 42, 47 to 54 inclusive and 69 to 73 inclusive
City Space Lands: PARTS 2, 33, 34, 36, 38, 40 and 75

PARTS 1 to 75 inclusive will be subject to reciprocal blanket easements for access and maintenance of building, utilities and services, support, emergency egress

PART	AREA (m ²) AT GRADE	PROPOSED OWNER	EASEMENTS IN FAVOUR OF	PROPOSED EASEMENTS	DESCRIPTION
1	351.9	Residential Lands	City Space Lands	Access and use of at-grade visitor bicycle parking spaces	Main Residential Condo
2	253.2	City Space Lands			Main City Space Lands
3	606.4	Retail/Commercial Lands	City Space Lands	Vehicular access for garbage/recycling	Main Driveway and Loading Area, Shared
				Use of at-grade loading area for garbage/recycling	
				Use of at-grade loading area for moving/deliveries	
4	16.1	Residential Lands	City Space Lands	Access to at-grade visitor bicycle parking spaces	Staircase G, Shared - With Exterior Access
5	11.3	Residential Lands			Staircase C, Shared - Going Up
6	17.4	Residential Lands			Staircase H and J, with Southern Exterior Access (Ground Floor and Up)
7	-	Residential Lands			Shared Hallway, Level 2
8	9.5	Residential Lands	City Space Lands	Access to at-grade visitor bicycle parking spaces	Hallway and Staircase F, Shared - With Exterior Access
9	-	Residential Lands	City Space Lands	Access to and use of shared service rooms	Shared Mechanical Room Area
10	-	Residential Lands			Area South of Mechanical Room on Mezz, North of Exterior Area (Canopy)
11	679.4	Retail/Commercial Lands			Main Commercial Area
12	119.2	Retail/Commercial Lands			Main Commercial Area

99-028RP03_66R-31350 Parts Description and Easements Table (Jun29'20).xlsx 1 of 7

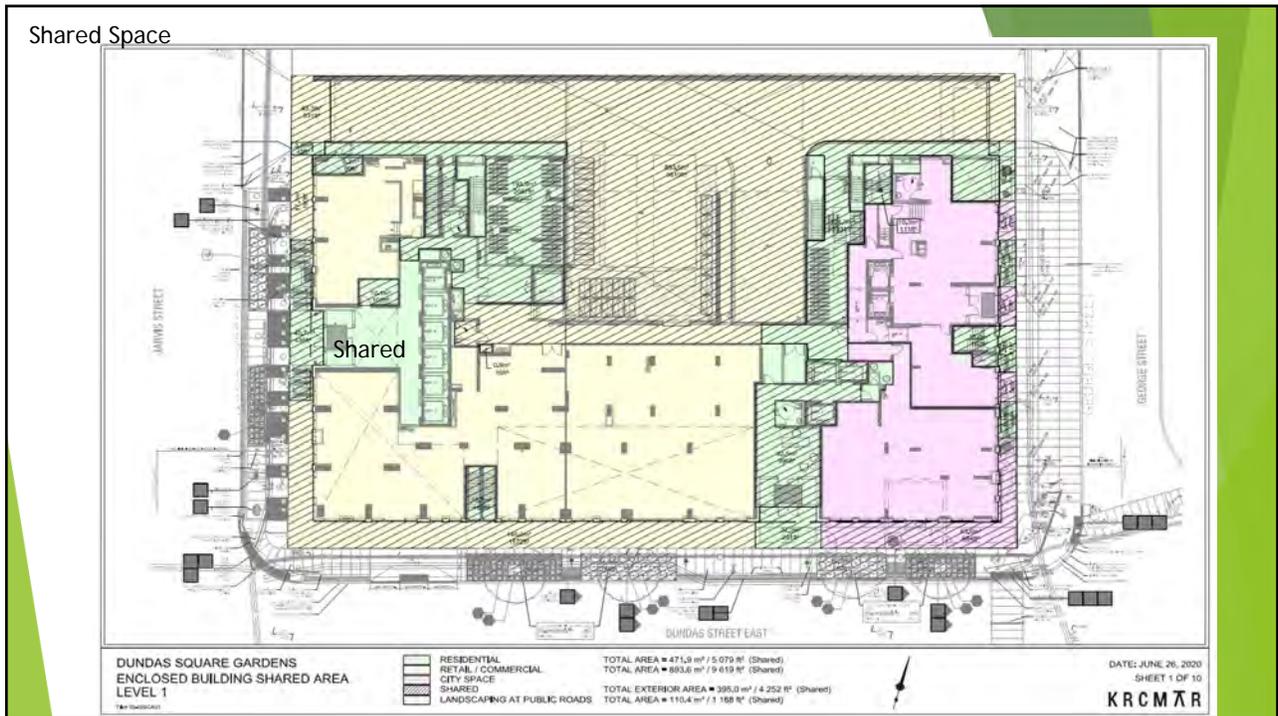
Colour coded Parts Table

6

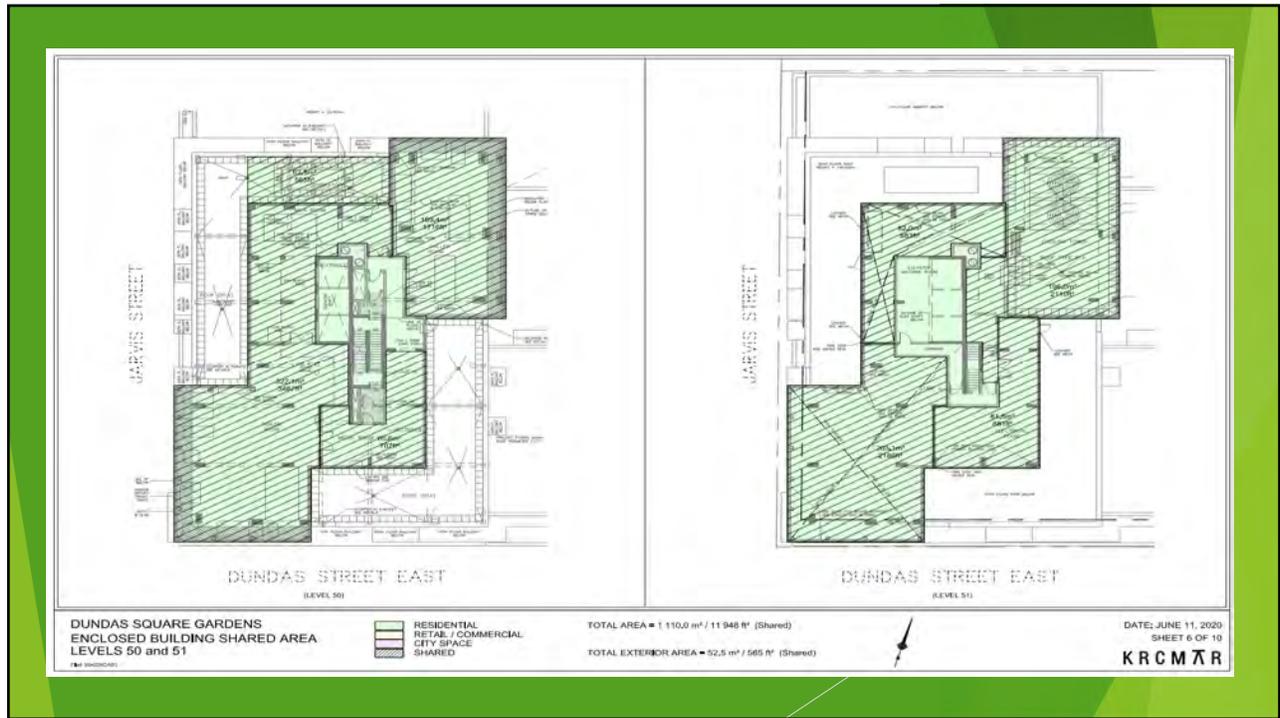
Areas of Each Component and Shared Space

- ▶ Assist with identification of the shared components

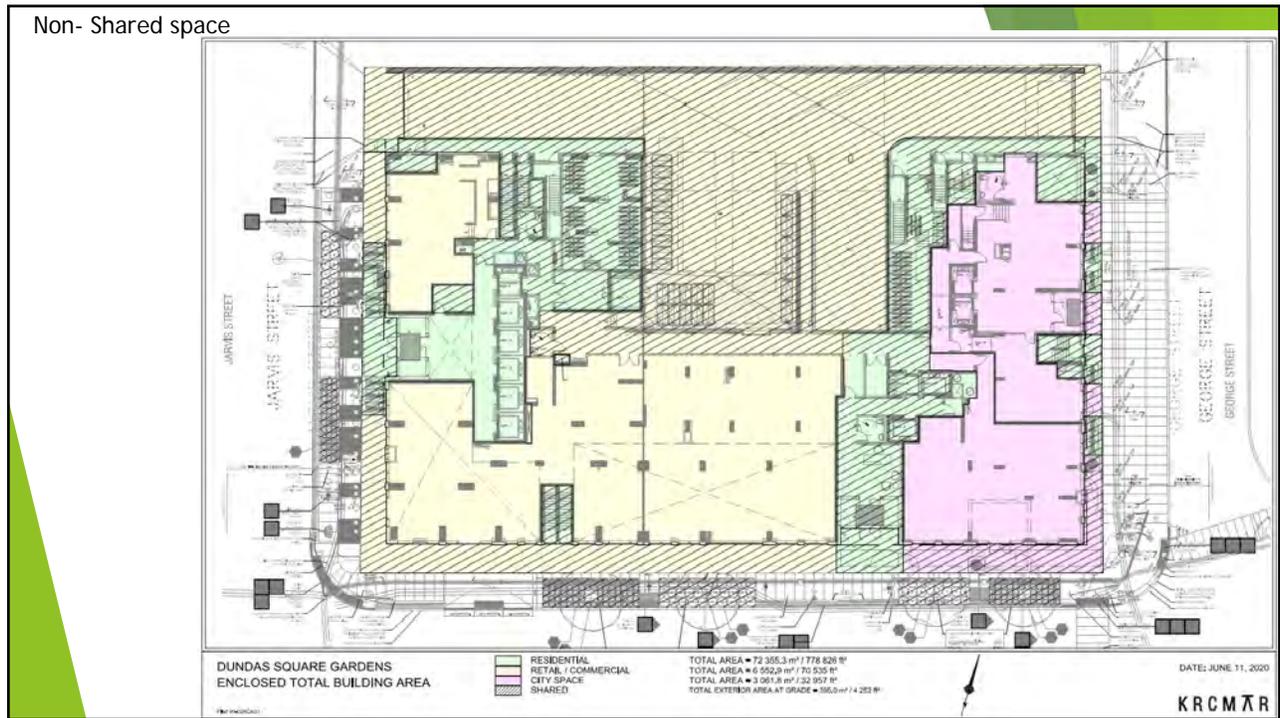
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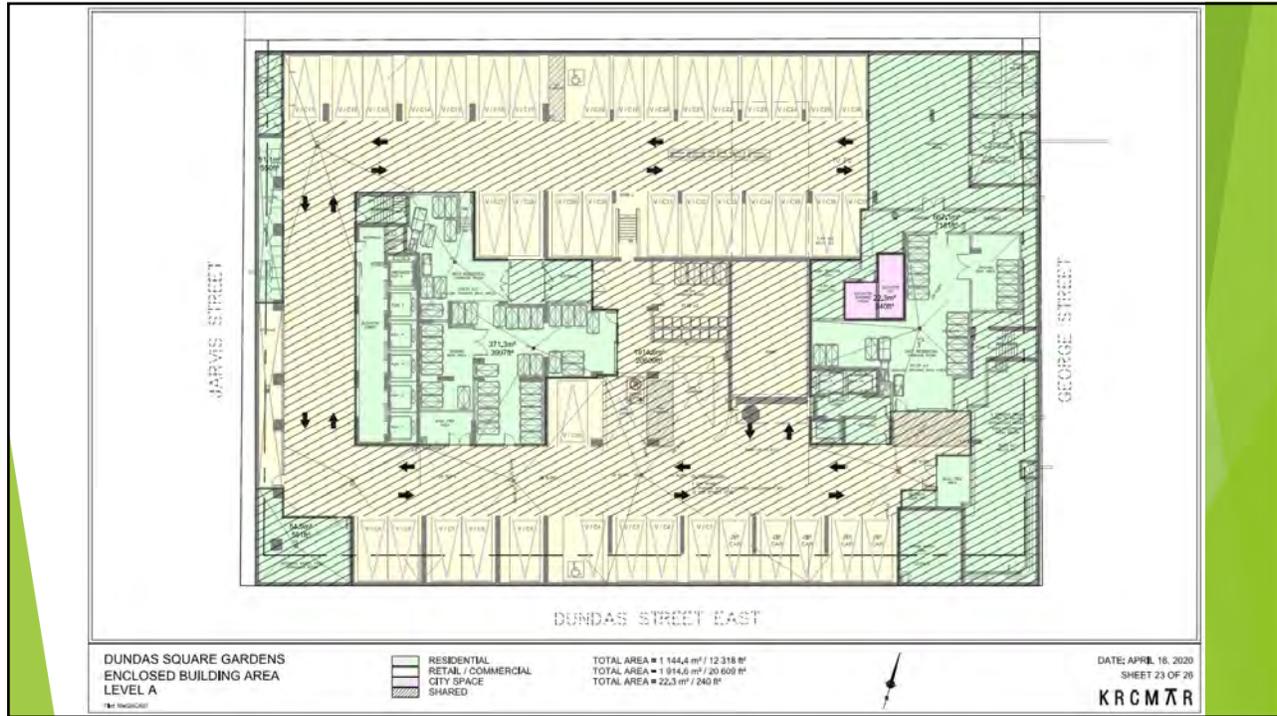
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9



10



11

**Dundas Square Gardens
Enclosed Building Areas**

Level		Area (sq.m.)	Area (sq.ft.)
1	Sharing	1365.5	14698
1-Mezz	Sharing	276.6	2977
2	Sharing	77.1	830
3	Sharing	68.7	739
4	Sharing	840.5	9047
50	Sharing	547.1	5889
51	Sharing	562.9	6059
A	Sharing	1666.3	17936
B	Sharing	991.3	10670
C	Sharing	84.8	913
D	Sharing	112.9	1215
Total All Levels:		6593.7	70974

Exterior Shared Areas

Level	Space	Area (sq.m.)	Area (sq.ft.)
1	Residential	100.5	1087
	Retail / Commercial	213.0	2293
	City Space	81.5	877
	Landscaping at Public Roads	110.4	1188
50	Residential	52.5	565
Total All Levels:		557.9	6005

Enclosed Building Areas by Components

12

Preparation of Easement and Severance Documents

- ▶ Assist in the preparation of the final cost allocation

13

DUNDAS SQUARE GARDENS
Shared Areas - Cost Allocation Chart

Item	Shared Areas	Location	Ownership	Allocated Share			Cost Sharing Mechanism
				Residential	Commercial / Retail	City Space	
1	Driveway (include overhead doors, paving, wall and soffit finishes, fixtures and any other building elements)	Level 1 northern portion of project	Retail/Commercial	88.27%	7.99%	3.74%	proportionate GFA
2	Loading areas (include paving, walls, man door, roll-up door, soffit, fixtures and any other building elements)	Level 1	Retail/Commercial	88.27%	7.99%	3.74%	proportionate GFA
3	Exterior walkways (include paving, walls, stair exit doors, soffit, fixtures and any other building elements)	Level 1	Residential Retail/Commercial City Space	88.27%	7.99%	3.74%	proportionate GFA
4	Corridors, stairs (include floor, walls, doors, ceiling, fixtures and any other building elements)	Level 1	Residential Retail/Commercial	88.27%	7.99%	3.74%	proportionate GFA
5	Visitor bicycle spaces (include floor, walls, ceiling, fixtures and any other building elements)	Level 1	Residential Retail/Commercial	95.77%	4.23%	0.00%	proportionate GFA
6	Washrooms (include floor, walls, doors, ceiling finishes, fixtures and any other building elements)	Level 1 western building	Residential Retail/Commercial	88.27%	7.99%	3.74%	proportionate GFA
7	Service elevator (include cab, floor, wall, door and ceiling finishes and fixtures)	Unit 1, Level 1	Residential	88.27%	7.99%	3.74%	proportionate GFA
8	CACF room (include floor, walls, doors, ceiling, fixtures and equipment)	Unit 2, Level 1	Residential	95.77%	4.23%	0.00%	proportionate GFA
9	Ramp (include overhead door, paving, wall and soffit finishes, fixtures and other building elements)	Level 1	Retail/Commercial	63.36%	36.64%	0.00%	ratio of parking spaces
10	Air shafts (include slab, walls, soffit and M&E equipment)	Levels 1 to D	Residential Retail/Commercial	63.36%	36.64%	0.00%	ratio of parking spaces
11	Gas meters (include floor, walls, soffit, and equipment/fixtures)	Unit 3, Level 1	Residential	95.77%	4.23%	0.00%	proportionate GFA
12	Mechanical room (include floor, walls, doors, ceiling, fixtures and equipment)	Unit 7, Level 1 (mezzanine)	Residential	88.27%	7.99%	3.74%	proportionate GFA
13	Corridors, stairs (include floor, walls, doors, ceiling, fixtures and any other building elements)	Mezzanine	Residential	88.27%	7.99%	3.74%	proportionate GFA

14

DUNDAS SQUARE GARDENS
Shared Areas - Cost Allocation Chart

Item	Shared Areas	Location	Ownership	Allocated Share			Cost Sharing Mechanism
				Residential	Commercial / Retail	City Space	
46	Elevators 8, 9 & 10, elevator lobby and corridors (include cabs, floor, walls, doors, ceiling, fixtures and other building elements)	Level 4	Residential	100.00%	0.00%	0.00%	proportionate GFA
47	Crawl mechanical space (include floor, walls, ceiling, fixtures, door and equipment/fixtures)	Level 4	Residential	100.00%	0.00%	0.00%	proportionate GFA
48	Corridors, vestibule (include floor, walls, doors, ceiling, fixtures and any other building elements)	Level A	Residential	95.77%	4.23%	0.00%	proportionate GFA

Notes:

1. proportionate GFA = total GFA divided by each shared component = shared percentage
2. ratio of parking space = total parking space divided by number of parking space designated for each shared component = shared percentage

Allocated Share Calculations

	Residential	Retail/Commercial	City Space	Total
Total GFA (sq.ft.)	778826	70535	32957	882318
3-way share Residential + Retail/Commercial + City Space (%)	88%	7.99%	4%	100%
2-way share Residential + Retail/Commercial (%)	92%	8%	-	100%
2-way share Residential + City Space (%)	96%	-	4%	100%
2-way share Retail/Commercial + City Space (%)	-	68%	32%	100%
Parking Spaces (#)	147	85	-	232
Parking Space (%)	63%	37%	-	100%

SCHEDULE "A" PROJECT SHARED FACILITIES

NOTE: All associated controls, valves, panels, isolators, wire guards, saddles, etc. that are integral to the operation and use of the equipment are deemed part of the equipment listing below and costs associated with the maintenance, repair and replacement if these items are included in the percentage allocations to each owner/corporation.

Item No.	Item Label	Description	Location	Service Unit Room	DWG No.	Shared Percentage Allocation			Note
						Condominium	Retail	Commercial Garage	
PROJECT SHARED FACILITIES - MECHANICAL									
	P-1C	Elevator Sump Pump	P-6 Garage		M-101		100.00%		
	P-5A	Main Cooling Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-5B	Main Cooling Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-6A	Condenser Water (Chiller) Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-6B	Condenser Water (Chiller) Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-7	DHRC (Cooling) Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-8	DHRC (Condenser Water) Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-9A	Main Heating Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-9B	Main Heating Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-10A	Boiler Loop Heating Circulation Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-10B	Boiler Loop Heating Circulation Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-12A	Domestic Water Heat Exchanger Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-12B	Domestic Water Heat Exchanger Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-13	DHW Recirc. Pump	3rd Floor Mechanical Room		M-206		100.00%		
	P-14	DHW Recirc. Pump	3rd Floor		M-206		100.00%		
	P-15	Recirc. Heat Exchanger Pump	3rd Floor		M-206		100.00%		
	P-27	Glycol Heating Pump	P-1 Mechanical Room		M-107		100.00%		
	P-R1A	Retail Heat Pump System	2nd Floor Mechanical Room		M-204		100.00%		
	P-R1B	Retail Heat Pump System	2nd Floor Mechanical Room		M-204		100.00%		
	P-R2A	Retail Glycol System Pump	2nd Floor Mechanical Room		M-204		100.00%		
	P-R2B	Retail Glycol System Pump	2nd Floor Mechanical Room		M-204		100.00%		
	P-R3A	Retail Cooling Tower Pump	2nd Floor Mechanical Room		M-204		100.00%		
	P-R3B	Retail Cooling Tower Pump	2nd Floor Mechanical Room		M-204		100.00%		
	F-3	Smoke Exhaust Fan	Ground Floor Loading Area	Unit 4, Level 1	M-201	89.39%	10.61%		
	EF-1	Garage Exhaust Fan	P-6 Parking Exhaust Shaft		M-101	90.20%		9.80%	
	EF-2	Garage Exhaust Fan	P-6 Parking Exhaust Shaft		M-101	90.20%		9.80%	
	EF-3	Garage Exhaust Fan	P-5 Parking Exhaust Shaft		M-102	90.20%		9.80%	
	EF-4	Garage Exhaust Fan	P-5 Parking Exhaust Shaft		M-102	90.20%		9.80%	
	EF-5	Garage Exhaust Fan	P-4 Parking Exhaust Shaft		M-103	90.20%		9.80%	
	EF-6	Garage Exhaust Fan	P-4 Parking Exhaust Shaft		M-103	90.20%		9.80%	
	EF-7	Garage Exhaust Fan	P-3 Parking Exhaust Shaft		M-104	90.20%		9.80%	
	EF-8	Garage Exhaust Fan	P-3 Parking Exhaust Shaft		M-104	90.20%		9.80%	
	EF-9	Garage Exhaust Fan	P-2 Parking Exhaust Shaft		M-105	90.20%		9.80%	
	EF-10	Garage Exhaust Fan	P-2 Parking Exhaust Shaft		M-105	90.20%		9.80%	
	EF-84	Exhaust Fan	Ground Floor Retail Recycling Room		M-201		100.00%		
	EF-85	Exhaust Fan	Ground Floor Retail Loading Area		M-202		100.00%		
	EF-86	Exhaust Fan	Ground Floor Retail Garbage Room		M-203		100.00%		
	EF-90	Exhaust Fan	2nd Floor Generator Room	Unit 1, Level 2	M-203	89.39%	10.61%		
	EF-91	Exhaust Fan (Chiller)	3rd Floor Mechanical Room	Unit 1, Level 2	M-205		100.00%		
	EF-93	Exhaust Fan (Chiller)	3rd Floor Mechanical Room	Unit 1, Level 2	M-205		100.00%		
	UH-3	Hydronic Unit Heater	P-1 Parking (Service Corridor P119)	Unit 3, Level A	M-107	90.20%		9.80%	
	UH-4	Hydronic Unit Heater	P-1 Parking (Mech/Elec Room P112)	Unit 2, Level A	M-107	90.20%		9.80%	
	UH-6	Hydronic Unit Heater	P-1 Parking (Irrigation Room P118)	Unit 3, Level A	M-107	89.39%	10.61%		
	UH-7	Hydronic Unit Heater	P-1 Parking (Holding/Move-in Room P117)	Unit 3, Level A	M-107	89.39%	10.61%		
	UH-10	Hydronic Unit Heater	Ground Floor Stair M		M-201	90.20%		9.80%	
	UH-12	Hydronic Unit Heater	Ground Floor Loading Area	Unit 4, Level 1	M-201	89.39%	10.61%		
	UH-13	Hydronic Unit Heater	Ground Floor Loading Area	Unit 4, Level 1	M-201	89.39%	10.61%		
	UH-14	Hydronic Unit Heater	Ground Floor Loading Area	Unit 4, Level 1	M-201	89.39%	10.61%		
	UH-14A	Hydronic Unit Heater	Ground Floor Retail Garbage Room	Unit 4, Level 1	M-201		100.00%		
	UH-15	Hydronic Unit Heater	Ground Floor Loading Area	Unit 4, Level 1	M-201	89.39%	10.61%		
	UH-16	Hydronic Unit Heater	Ground Floor Vestibule 117	Unit 5, Level 1	M-201	89.39%	10.61%		
	UH-17	Hydronic Unit Heater	Ground Floor Vestibule 117	Unit 5, Level 1	M-201	89.39%	10.61%		
	UH-18	Hydronic Unit Heater	Ground Floor Stair J		M-201	90.20%		9.80%	

	UH-21	Hydronic Unit Heater	P-1 Parking Water Meter Room	Part 1, Level A	M-107	90.10%	8.34%	1.57%	
	AHU-10(C)	Air Handling Unit (Serving Electrical Room)	P-1 Parking Main Electrical Room (P109)	Unit 1, Level A	M-107	90.20%		9.80%	
	AHU-10(C)	Air Handling Unit (Serving Electrical Room)	P-1 Parking Main Electrical Room (P109)	Unit 1, Level A	M-107	90.20%		9.80%	
	MUA-4	Make-Up-Air Unit	P-1 Parking	Unit 3, Level A	M-107	90.20%		9.80%	
	CH-1	Condo Chiller 1	3rd Floor Mechanical Room		M-205	100.00%			
	DHRC-1	Dedicated Heat Recovery Chiller	3rd Floor Mechanical Room		M-205	100.00%			
	CT-1	Condo Cooling Tower	3rd Floor Mechanical Room		M-205	100.00%			
	RCT-1	Retail Fluid Cooler	3rd Floor Mechanical Room		M-205		100.00%		
	B-1	Residential Lower System Heating Boiler	3rd Floor Upper Mechanical Platform		M-205	100.00%			
	B-2	Residential Lower System Heating Boiler	3rd Floor Upper Mechanical Platform		M-205	100.00%			
	B-3	Residential Lower System Heating Boiler	3rd Floor Upper Mechanical Platform		M-205	100.00%			
	B-4	Residential Lower System Heating Boiler	3rd Floor Upper Mechanical Platform		M-205	100.00%			
	B-5	Residential Lower System Heating Boiler	3rd Floor Upper Mechanical Platform		M-205	100.00%			
	DB-1	Residential Lower Domestic Boiler	3rd Floor Upper Mechanical Platform		M-205	100.00%			
	DB-2	Residential Lower Domestic Boiler	3rd Floor Upper Mechanical Platform		M-205	100.00%			
	RB-1	Retail Heat Pump Boiler	2nd Floor Mechanical Room Lower		M-203		100.00%		
	RB-2	Retail Heat Pump Boiler	2nd Floor Mechanical Room Lower		M-203		100.00%		
	RHB-1	Retail Glycol Heating Boiler	2nd Floor Mechanical Room Lower		M-203		100.00%		
	RHB-2	Retail Glycol Heating Boiler	2nd Floor Mechanical Room Lower		M-203		100.00%		
	GEN-1	Natural Gas Generator	2nd Floor Mechanical Room Upper	Unit 1, Level 2	M-204	90.10%	8.34%	1.57%	
	GEN-2	Natural Gas Generator	2nd Floor Mechanical Room Upper	Unit 1, Level 2	M-204	90.10%	8.34%	1.57%	
	GEN-3	Natural Gas Generator	2nd Floor Mechanical Room Upper	Unit 1, Level 2	M-204	90.10%	8.34%	1.57%	
	FP	Fire Pump	P-1 Parking Level	Unit 2, Level A	M-107	90.10%	8.34%	1.57%	
	JP	Jockey Pump	P-1 Parking Level	Unit 2, Level A	M-107	90.10%	8.34%	1.57%	
	AC	Air Compressor	P-1 Parking Level	Unit 2, Level A	M-107	90.10%	8.34%	1.57%	

							Shared Percentage Allocation			
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Item No.	Item Label	Description	Location	Service Unit Room	DWG No.	Condominium	Retail	Commercial Garage	Note
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PROJECT SHARED FACILITIES - ELECTRICAL									
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	HVSG #1	High Voltage Switchgear - 13.8kV Incoming	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.10%	8.34%	1.57%	
	LV MAIN SWBD #1	Low Rise Mainswitch Board - 4000A 347/600 3Ø 4W	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.10%	8.34%	1.57%	
		Low Rise Mainswitch Board - Breaker - 1200/1200A (Feeding Lower Fire Pump)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.10%	8.34%	1.57%	
		Low Rise Mainswitch Board - Breaker - 30/15A (Hydro Meter Feed)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-107	90.10%	8.34%	1.57%	
		Low Rise Mainswitch Board - Breaker - 2000/2000A (Feeding Retail Switchboard)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106		100.00%		
		Low Rise Mainswitch Board - Breaker - 600/500A (Feeding Power Panel #1)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.10%	8.34%	1.57%	
		Low Rise Mainswitch Board - Breaker - 30/15A (Hydro Meter Feed)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Low Rise Mainswitch Board - Breaker - 400/400A (Feeding Garage Switchboard)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Low Rise Mainswitch Board - Breaker - 600/600A (Feeding Splitter #1)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Low Rise Mainswitch Board - Breaker - 400/400A (Feeding Splitter #2)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Low Rise Mainswitch Board - Breaker - 600/600A (Feeding Chiller #1)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Low Rise Mainswitch Board - Breaker - 800/800A (Feeding Auto Transfer Switch for Life Safety Loads)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Low Rise Mainswitch Board - Breaker - 400/400A (Feeding Emergency Power Supply)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Low Rise Mainswitch Board - Breaker - 1200/1200A (Spare)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Low Rise Mainswitch Board - Breaker - 800/800A (Splitter #3)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
	GARAGE SWBD	Garage Switch Board - 400A 347/600 3Ø 4W MAINS	P-1 Parking Electrical Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Garage Switch Board - Breaker - 100/100A (Feeding Panel 'GL' & 'CGL')	P-1 Parking Electrical Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Garage Switch Board - Breaker - 60/60A (Feeding TX and Panel 'EG')	P-1 Parking Electrical Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Garage Switch Board - Breaker - 100/90A (Feeding TX and Panel 'G')	P-1 Parking Electrical Room	Unit 1, Level A	E-106	90.20%		9.80%	
	LV RETAIL SWBD	Retail Switch Board - 2000A 347/600 3Ø 4W	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 30/15A (Feeding Hydro Meter)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 600/600A (Feeding Splitter #5)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 11)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 10)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 9)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 8)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 7)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 6)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 5)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 4)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 3B)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		

		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 3)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 2)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
		Retail Switch Board - Breaker - 60/60A (Feeding CRU No. 1)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
	MAIN EMERGENCY SWBRD #1	Main Emergency Switchboard - 1200A 600V 3Ø 3W MAINS	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Main Emergency Switchboard - Breaker - 400/400A (Feeding Auto Transfer and Fire Pump FP-1A & FP-1)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Main Emergency Switchboard - Breaker - 400/300A (Feeding Retail Life Safety Splitter #8E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Main Emergency Switchboard - Breaker - 800/500A (Feeding Auto Transfer Switch Life Safety Systems)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Main Emergency Switchboard - Breaker - 400/400A (Feeding Auto Transfer Switch Non-Life Safety Systems)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Main Emergency Switchboard - Fused Switch - 400/400A (For Supplementary Load Bank Connection)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
	ATS #1	Auto Transfer Switch - 400A 347/600V (Feeding Retail Splitter #8E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106		100.00%		
	ATS #2	Auto Transfer Switch - 800A 347/600V (Feeding Emergency Power Panel Low Rise)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
	ATS #3	Auto Transfer Switch - 400A 347/600V (Feeding Splitter #4E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
	ATS #4	Auto Transfer Switch - 400A 347/600V (Feeding Retail Splitter #7E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.10%	8.34%	1.57%	
	ATS #5	Auto Transfer Switch - 400A 347/600V (Feeding Emergency Power Panel High Rise)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
	EPP #1 LOW RISE	Emergency Power Panel - 800A 600V 3Ø 3W MAIN	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	89.39%	10.61%		
		Emergency Power Panel - Breaker - 400/300A (Feeding Splitter #2E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 30/15A (Feeding TX-PNL CACF and Fire Alarm Control Panel in CACF Room)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.10%	8.34%	1.57%	
		Emergency Power Panel - Breaker - 100/100A (Feeding TX and Panel 'EA')	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 100/100A (Feeding TX and Panel 'ER' & 'EDA')	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 30/15A (Spare)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 30/15A (Feeding Stair Press. Fan F-5)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Emergency Power Panel - Breaker - 30/15A (Feeding Stair Press. Fan F-4)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Emergency Power Panel - Breaker - 30/15A (Feeding Stair Press. Fan F-2)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Emergency Power Panel - Breaker - 30/15A (Feeding Stair Press. Fan F-1)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Emergency Power Panel - Breaker - 200/200A (Feeding Splitter #3E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
		Emergency Power Panel - Breaker - 400/300A (Feeding Splitter #1E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	90.20%		9.80%	
	EPP #1 HIGH RISE	Emergency Power Panel - 800A 600V 3Ø 3W MAIN	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 100/100A (Feeding TX and Panel 'EC')	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 30/15A (Feeding TX-PNL CACF and Fire Alarm Control Panel in CACF Room)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 400/400A (Feeding Splitter #5E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 200/200A (Feeding Splitter #6E)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 100/80A (Feeding Elevator Press. Fan F-8)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 100/80A (Feeding Elevator Press. Fan F-9)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 30/15A (Feeding Stair Press. Fan F-7)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
		Emergency Power Panel - Breaker - 30/15A (Feeding Stair Press. Fan F-6)	P-1 Parking - Electrical Substation Room	Unit 1, Level A	E-106	100.00%			
	PP #1	Power Panel - 1600A 120/208V 3Ø 4W MAIN (Feeding Riser #1P & #2P)	P-1 Parking Electrical Room	Unit 2, Level A	E-106	90.20%		9.80%	
	SPL #1	Splitter #1 - 600A 600V 3Ø 3W	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 60/60A (Feeding TX and Panel 'M1')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding Glycol Pump 'P-11')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/20A (Feeding MUA-2)	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding Glycol Heating Pump 'P-27')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding DHW Recirc. Pump 'P-14')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding DHW Recirc. Pump 'P-13')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 100/80A (Feeding Chilled Water Pump 'P-6b')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 100/80A (Feeding Chilled Water Pump 'P-6A')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding DHRC Cooling Pump 'P-7')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 100/80A (Main Heating Pump 'P-9B')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 100/80A (Main Heating Pump 'P-9A')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 100/80A (Main Cooling Pump 'P-5B')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 100/80A (Main Cooling Pump 'P-5A')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding DHRC Condenser Water Pump 'P-8')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/25A (Feeding Boiler Loop Heating Pump 'P-10A')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/25A (Feeding Boiler Loop Heating Pump 'P-10A')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 60/60A (Feeding Cooling Tower Heaters)	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 100/100A (Feeding Cooling Tower Heaters)	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 200/200A (Feeding DHRC-1)	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding Domestic Water Heat Exchanger Pump 'P-12A')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
		Splitter #1 - Disconnect - 30/15A (Feeding Domestic Water Heat Exchanger Pump 'P-12B')	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
	SPL #2	Splitter #2 - 400A 600V 3Ø 3W	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #2 - Disconnect - 400/350A (Feeding TX and Splitter #2A)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #2 - Disconnect -30/15A (Feeding Electrical Sub-Station AHU-10(C))	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #2 - Disconnect -30/15A (Feeding Electrical Sub-Station AHU-10(C))	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #2 - Disconnect -30/15A (Feeding Main Lobby AHU-2)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	100.00%			
		Splitter #2 - Disconnect -30/15A (Feeding Main Lobby AHU-2)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	100.00%			
		Splitter #2 - Disconnect -30/15A (Feeding P-1 Parking MUA)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #2 - Disconnect -30/30A (Feeding Truck Turntable Machine)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	89.39%	10.61%		

	SPL #2A	Splitter #2A - 1200A 120/208V 3Ø 4W	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #2A - Disconnect - 60/60A (Feeding Panel 'K')	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-107	100.00%			
		Splitter #2A - Disconnect - 200/200A (Feeding Panel 'L')	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-108	100.00%			
		Splitter #2A - Disconnect - 200/200A (Feeding Panel 'B')	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-109	100.00%			
		Splitter #2A - Disconnect - 200/200A (Feeding Panel 'A')	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-110	100.00%			
		Splitter #2A - Disconnect - 30/25A (Feeding Garbage Compactor)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-111	100.00%			
		Splitter #2A - Disconnect - 30/25A (Feeding Garbage Compactor)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-112	100.00%			
		Splitter #2A - Disconnect - 30/25A (Feeding Scissor Lift)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-113	89.39%	10.61%		
		Splitter #2A - Disconnect - 30/15A (Feeding Dock Leveler)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-114	89.39%	10.61%		
		Splitter #2A - Disconnect - 30/15A (Feeding Dock Leveler)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-115	89.39%	10.61%		
		Splitter #2A - Disconnect - 30/15A (Feeding Dock Leveler)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-116	89.39%	10.61%		
		Splitter #2A - Disconnect - 30/15A (Feeding Irrigation Pump)	P-1 Parking Electrical Room P-110	Unit 2, Level A	E-117	89.39%	10.61%		
	SPL #2E	Splitter #2E - 400A 600V 3Ø 3W	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 100/100A (Feeding TX and Panel 'ECG')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 100/100A (Feeding TX and Panel 'EG')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 100/100A (Feeding TX and Panel 'EGL' & 'ECGL')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-1')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-2')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-3')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-4')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-5')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-6')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-7')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-8')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-9')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
		Splitter #2E - Disconnect - 30/15A (Feeding Garage Exhaust Fan 'EF-10')	P-2 Parking Electrical Room	Unit 116, Level B	E-105	90.20%		9.80%	
	SPL #4E	Splitter #4E - 400A 600V 3Ø 3W	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #4E - Disconnect - 100/150A (Feeding Booster Pumps)	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	100.00%			
		Splitter #4E - Disconnect - 30/15A (Feeding Air Compressor)	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	90.10%	8.34%	1.57%	
		Splitter #4E - Disconnect - 30/15A (Feeding Jockey Pump)	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	90.10%	8.34%	1.57%	
		Splitter #4E - Disconnect - 30/15A (Feeding Storm Sump Pump 'P-3B')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	100.00%			
		Splitter #4E - Disconnect - 30/15A (Feeding Storm Sump Pump 'P-3A')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	100.00%			
		Splitter #4E - Disconnect - 30/15A (Feeding Sanitary Sump Pump 'P-2A')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #4E - Disconnect - 30/15A (Feeding Sanitary Sump Pump 'P-2B')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	89.39%	10.61%		
		Splitter #4E - Disconnect - 30/25A (Feeding Elevator Sump Pump 'P-1A', 'P-1B', P-1C')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	100.00%			
		Splitter #4E - Disconnect - 60/40A (Feeding TX and Panel 'EJ')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	100.00%			
		Splitter #4E - Disconnect - 60/40A (Feeding TX and Panel 'EH')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	100.00%			
		Splitter #4E - Disconnect - 60/40A (Feeding TX and Panel 'ECR1')	P-1 Parking Mechanical Room	Unit 2, Level A	E-106	100.00%	100.00%		
	PTX-1	Transformer - 4000KVA 13.8KV 347/600V	P-1 Parking Electrical Room	Unit 2, Level A	E-106	90.10%	8.34%	1.57%	
	TX-PNL G	Transformer - 75KVA 600-120/208V 3Ø 4W (Feeding Panel G)	P-1 Parking Electrical Room	Unit 2, Level A	E-106	90.20%		9.80%	
	TX-PNL CG	Transformer - 45KVA 600-120/208V 3Ø 4W (Feeding Panel CG)	P-1 Parking Electrical Room	Unit 2, Level A	E-106			100.00%	
	TX-PNL CR	Transformer - 50KVA 600-120/208V 3Ø 4W (Feeding Panel CR)	P-1 Parking Electrical Room	Unit 2, Level A	E-106		100.00%		
	TX-PNL H	Transformer - 30KVA 600-120/208V 3Ø 4W (Feeding Panel H)	P-1 Parking Electrical Room	Unit 2, Level A	E-107	100.00%			
	TX-PNL M1	Transformer - 45KVA 600-120/208V 3Ø 4W (Feeding Panel M1)	3rd Floor Mechanical Room	Unit 1, Level 2	E-203	89.39%	10.61%		
	TX-PNL EG	Transformer - 75KVA 600-120/208V 3Ø 4W (Feeding Panel EG)	P-2 Parking Electrical Room (P205)	Unit 116, Level B	E-105	100.00%			
	TX-PNL ECG	Transformer - 75KVA 600-120/208V 3Ø 4W (Feeding Panel ECG)	P-2 Parking Electrical Room (P205)	Unit 116, Level B	E-105	100.00%			
	TX-PNL ECR1	Transformer - 30KVA 600-120/240V 3Ø 4W (Feeding Panel ECR1)	P-1 Parking Retail Electrical Room	Unit 2, Level A	E-106	100.00%			
	TX-PNL EH	Transformer - 30KVA 600-120/240V 3Ø 4W (Feeding Panel EH)	P-1 Parking Main Electrical Room	Unit 1, Level A	E-106	100.00%			
	TX-PNL EJ	Transformer - 30KVA 600-120/240V 3Ø 4W (Feeding Panel EJ)	P-1 Parking Main Electrical Room	Unit 1, Level A	E-106	100.00%			
	TX-PNL ELR	Transformer - 15KVA 600-120/240V 3Ø 4W (Feeding Panel ELR)	P-1 Parking Electrical Room	Unit 2, Level A	E-106	100.00%			
	TX-PNL EL	Transformer - 30KVA 600-120/208V 3Ø 4W (Feeding Panel EL)	P-1 Parking Electrical Room	Unit 2, Level A	E-106	100.00%			
	TX-PNL EC	Transformer - 75KVA 600-120/240V 3Ø 4W (Feeding Panel EC)	P-1 Parking Main Electrical Room	Unit 1, Level A	E-106	100.00%			
	TX-FIRE ALARM	Transformer - 3KVA 600-120/240V 1Ø 4W (Feeding Panel Fire Alarm Control Panel in CACF)	P-1 Parking Main Electrical Room	Unit 1, Level A	E-106	89.39%	10.61%		

						Shared Percentage Allocation			
Item No.	Item Label	Description	Location	Service Unit Room	DWG No.	Condominium	Retail	Commercial Garage	Note
PROJECT SHARED UNITS									
		Communication Control Unit (CCU)	Unit 115, Level B			85.00%	10.00%	5.00%	
		CACF Unit	Unit 6, Level 1			85.00%	10.00%	5.00%	
		Ramp and Driveway Unit	Unit 3, Level A			90.20%	0.00%	9.80%	
		Service Units:	Unit 1, Level 2 (mechanical room)			85.00%	10.00%	5.00%	
			Units 1 & 2, Level A (mechanical/electrical)			85.00%	10.00%	5.00%	
			Unit 116, Level B (mechanical/electrical room)			85.00%	10.00%	5.00%	
		Loading Dock Unit	Unit 4, Level 1						
		Loading Dock Steward				60.00%	40.00%	0.00%	
		Dock turntable Maintenance				60.00%	40.00%	0.00%	
		Retail Walkway Unit	Unit 5, Level 1			50.00%	49.00%	1.00%	
		Visitor Bicycle Parking Unit	Unit 3, Level 1			50.00%	50.00%	0.00%	
		Retail Shuttle Elevator Unit	Unit 7, Level 1			5.00%	5.00%	90.00%	
						Shared Percentage Allocation			
Item No.	Item Label	Description	Location	Service Unit Room	DWG No.	Condominium	Retail	Commercial Garage	Note

PROJECT SHARED FACILITIES - EXPENSE ALLOCATION									
		EXTERIOR							
		Landscape Exterior				50%		50%	0%
		Snow Removal Contract				50%		45%	5%
		Sand/Salt				50%		45%	5%
		R&M Irrigation (Grade Level)				50%		50%	0%
		R&M Sidewalks				50%		50%	0%
		R&M Bike Rack				50%		50%	0%
		R&M Glass Canopy				10%		90%	0%
		Canopy Encroachment Fee Payable				0%		100%	0%
		Signage + Exterior Signs				0%		90%	10%
		GARAGE							
		Garage Door / Parking Equipment (Commercial)				50%		5%	45%
		Garage Shared Drive Aisles & Ramp				50%		5%	45%
		Commercial Parking Signage R&M				0%		10%	90%
		R&M Parking Elevator				5%		5%	90%
		Elevator Licence & Permit				5%		5%	90%
		BUILDING SYSTEM							
		Generator - Maintenance & Fuel (3rd Fl Mech Rm)				85%		10%	5%
		Fire Protection System Contract				85%		10%	5%
		R & M Fire Protection System				85%		10%	5%
		Maintenance Sewers/Catch Basins				85%		10%	5%
		Garage Ventilation System				85%		5%	10%
		Sanitary Discharge Proportionate Share				90%		10%	0%
		LOADING DOCK							
		Maintenance Salaries				50%		50%	0%
		R&M (Loading Dock)				50%		50%	0%
		Loading Dock Garage Door				50%		50%	0%
		Pest Control				50%		50%	0%
		General Supplies				50%		50%	0%
		General Admin (Telephone+ Mis)				50%		50%	0%
		R&M Plumbing				50%		50%	0%
		MID-BLOCK CONNECTION							
		R&M (Midblock Connection)				40%		55%	5%
		R&M Doors & Hardware				40%		55%	5%
		Landscape Contract (Interior Midblock)				40%		55%	5%
		Interior Signage Wayfinding Signage				0%		90%	10%
		ALL SHARED							
		Cleaning Contract				40%		55%	5%
		Security Contract (Monitoring & Equipment)				40%		55%	5%
		Heating & Cooling (Utilities for HVACs)				40%		55%	5%
		Electricity (Shared Base Building)				40%		55%	5%
		Water				40%		55%	5%
		R&M HVAC				40%		55%	5%
		R&M Electrical				40%		55%	5%
		ADMINISTRATIVE							
		Administration				45%		50%	5%
		Property Manager				45%		50%	5%
		Insurance				30%		70%	0%
		Cam Audit Fee				50%		45%	5%

NOTES

#1	Mechanical and electrical equipment and other shared facilities located in the Parking Garage are allocated between the parties based on number of parking units owned by each of the Project Parties, unless the intended use of such shared facility serves primarily one or two Components in which case the cost allocation has been determined based on intended usage and benefit of such shared facility.
#2	Mechanical and electrical equipment, along with other shared facilities, located above-ground in the Building (not in the Parking Garage) are allocated between the parties based on the gross floor areas of the respective Components, unless the intended use of such shared facility serves primarily one or two Components in which case the cost allocation has been determined based on intended usage and benefit of such shared facility.
#3	Where certain mechanical and/or electrical equipment located within a Project Shared Unit serve only one Component, costs associated with same are allocated 100% to the Component the equipment serves notwithstanding the fact that the equipment is located within a Project Shared Unit.

#4

Where the cost sharing allocation with respect to a shared facility item is allocated only between two parties in this Schedule D, such shared facilities are collectively defined as the "Two-Way Shared Facilities" in accordance with Section 3.1(a) of the Reciprocal Cost-Sharing and Easement Agreement.



LANDPRO
CONFERENCE
2021

PRESENTATION:

FUTURE TECH

1:45 P.M. - 2:15 P.M.

George Carras
Founder & CEO
R-Labs Canada Inc.

06

SPEAKER



GEORGE CARRAS

Founder & CEO,
R-Labs Canada Inc.

Presentation:
Future Tech

Following his highly successful 2020 LandPRO debut, George will continue the exploration of new tech and its impact on the land and development industry. Enthusiastic, insightful and always entertaining, George will delve into several trends and emerging tech disruptors and discuss the impact of, among other factors, COVID on their emergence.

Real Estate Transformation

Technology in Context

LandPro Conference 2021



**Purpose-Driven
Company Building**

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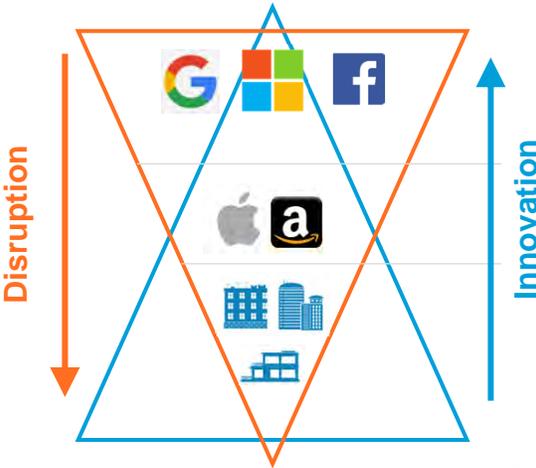
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Transformation = Disruption + Innovation

- Economic
- Political
- Regulatory
- Climate
- Technology





Information-Only Products

Physical Products with Information-Based Revenue Streams

Physical Products That Are Information-Enabled

Source: Salim Ismail & G.M. Carras

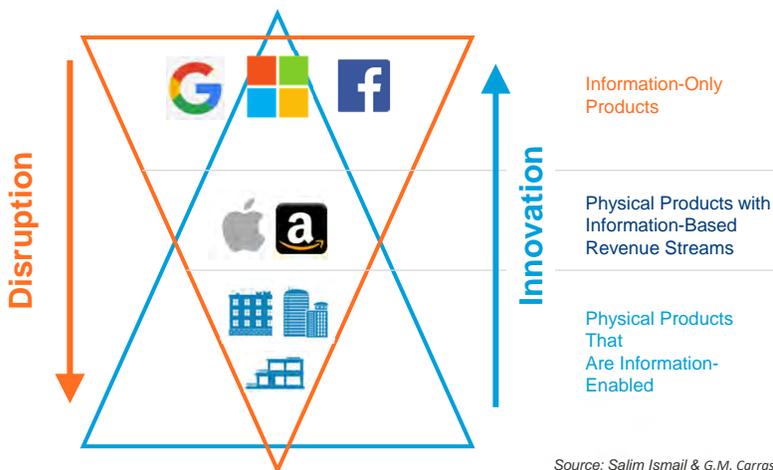
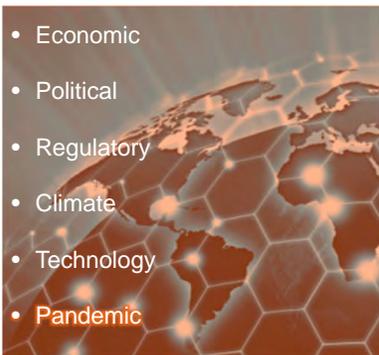
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Transformation = Disruption + Innovation



Source: Salim Ismail & G.M. Carras

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3

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What We Do and Where We Do it

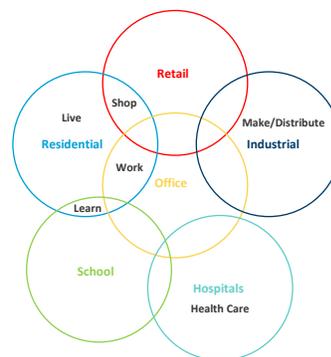
OLD MODEL



DISRUPTIONS



NEW MODEL?



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What We Do and Where We Do it

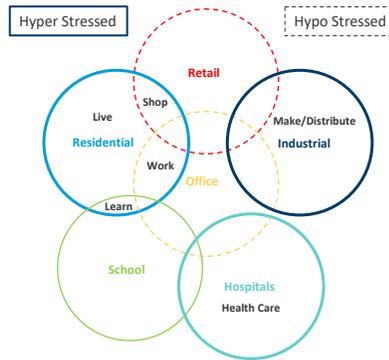
OLD MODEL



DISRUPTIONS



NEW MODEL?



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Living in an Experiment

Goal: Optimizing Human Collaboration

Human Health



Physical Health

Mental Health

Social Health

Financial Health

Learning Bias Confirmation Bias



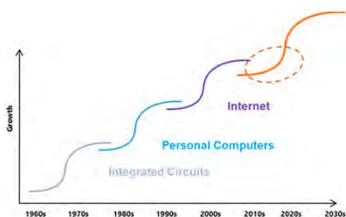
Brain | Mind



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Technologies in the Knee of the Exponential Curve



Current:

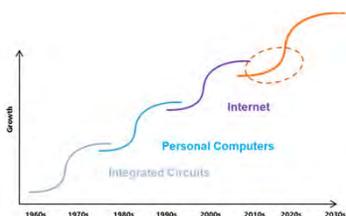
- Machine Learning
- Sharing Economy
- VR/AR
- IOT
- 3D Printing
- Robotics
- AV
- Blockchain
- Cloud
- Cyber Security
- Renewable Energy
- Energy Storage



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Technologies in the Knee of the Exponential Curve



Current:

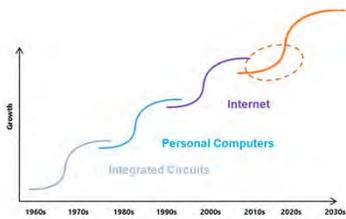
- Machine Learning
- Sharing Economy
- VR/AR
- IOT
- 3D Printing
- Robotics
- AV
- Blockchain
- Cloud
- Cyber Security
- Renewable Energy
- Energy Storage



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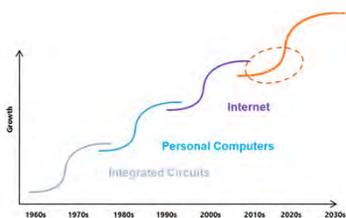
Technologies in the Knee of the Exponential Curve



- Current:**
- Machine Learning
 - Sharing Economy
 - VR/AR
 - IOT
 - 3D Printing
 - Robotics
 - AV
 - Blockchain
 - Cloud
 - Cyber Security
 - Renewable Energy
 - Energy Storage



Technologies in the Knee of the Exponential Curve



- Current:**
- Machine Learning
 - Sharing Economy
 - VR/AR
 - IOT
 - 3D Printing
 - Robotics
 - AV
 - Blockchain
 - Cloud
 - Cyber Security
 - Renewable Energy
 - Energy Storage



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Why Then, Why Now?



80-90% of Stand Alone Start-Ups Fail

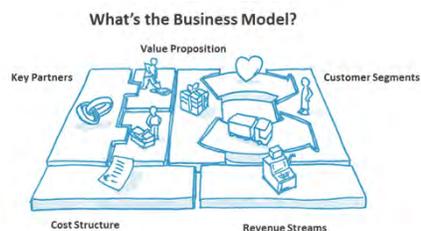
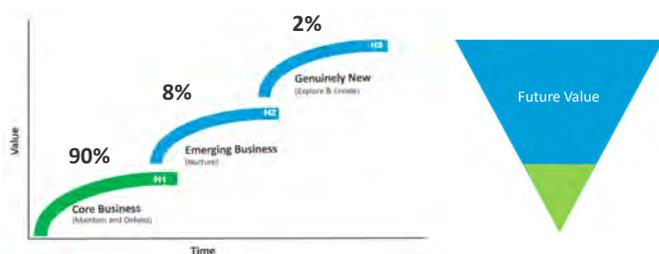
- Idea Risk
- Team Risk
- Funding Risk
- Tech Risk
- Scaling Risk
- Execution Risk



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Technologies vs Business Model



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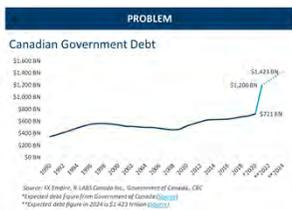
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Home Building in the Greater Toronto Area

PAST



PRESENT



SOLUTION

- Productivity
- Immigration

FUTURE

1921

2021

2020

- 257,100 RETIREMENTS
- 227,600 NEW ENTRANTS
- 50,200 (+4.9%) EMPLOYMENT CHANGE

2121



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Who is in Charge?



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Who is in Charge?

Monetary Policy

Immigration Policy

Federal Government

Land Use Policy

Transit & Infrastructure Policy

Provincial Government

"There are no big problems, there are just a lot of little problems."
- Henry Ford

POLICY FRAMEWORK

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LandPro Conference 2021
Who is in Charge?

Housing Market Flow (Development)

Housing Market Stock (Resale & Rental)

Monetary Policy

Immigration Policy

Federal Government

Land Use Policy

Transit & Infrastructure Policy

Provincial Government

Architects

Planners

Developers

Municipalities

Provincial Ministries

Investors

Elected Officials

Area Residents

Realtors

Labour Unions

Regulators

Lenders

Engineers

Suppliers

Surveyors

Provincial Ministries

Lawyers

Tenants

Condominium Corps

CRA

Home Owners

Land Transfer Tax

Problems

Stakeholders

Land Assembly

Design

Approvals

Marketing / Sales

Warranty

Financing

Construction

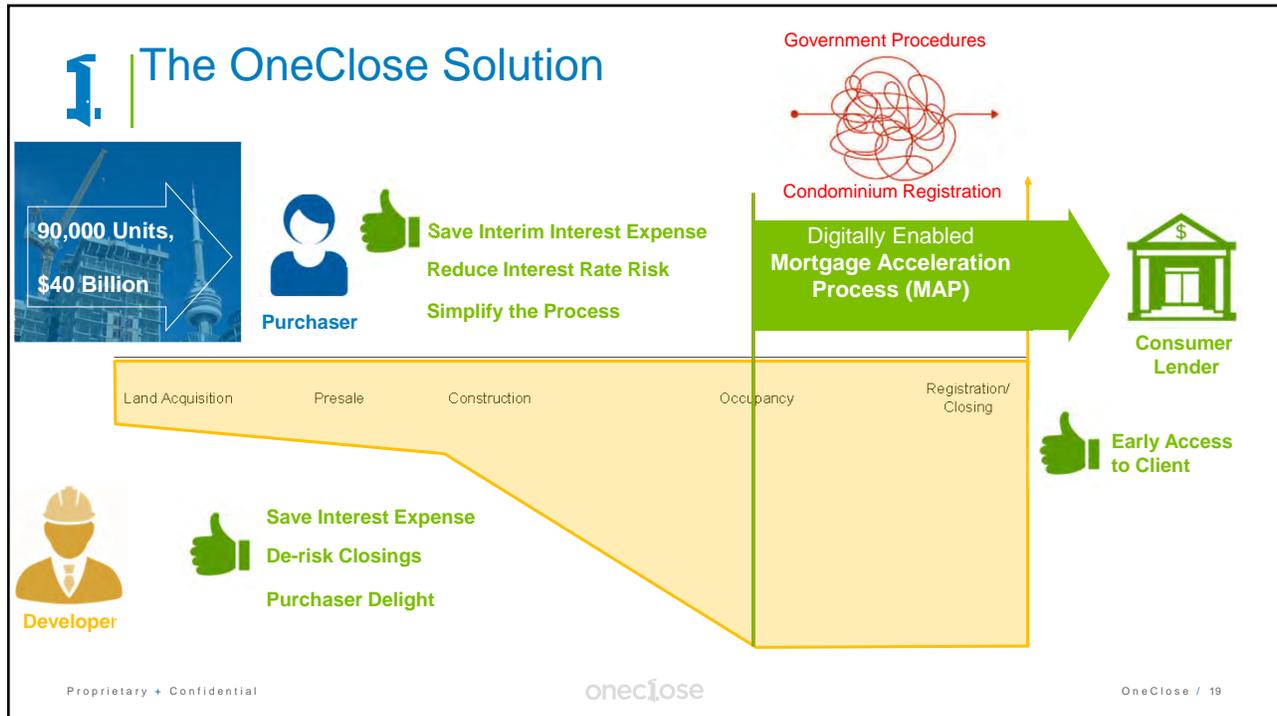
Occupancy

Rental

Resale

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Moving From VR to R

Product Development in the Digital Twin

R-Hauz

Queen/Coxwell, City of Toronto

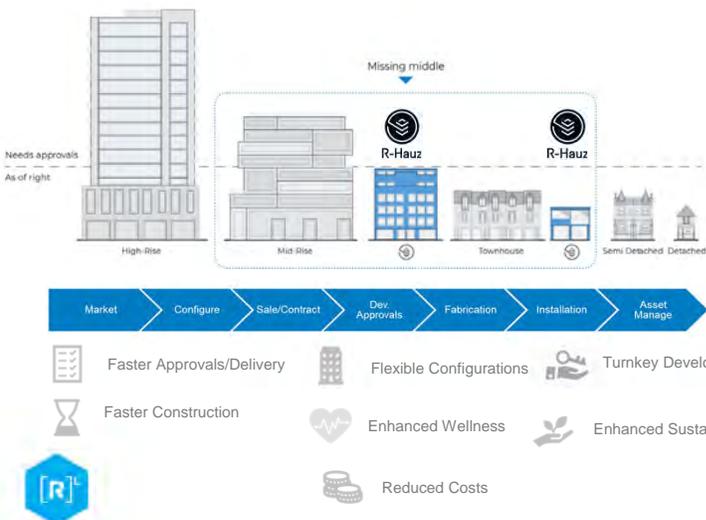
Proprietary + Confidential | Better Urban Living | R-Hauz | 20

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R-Hauz Solving the Missing Middle

"Housing as a Product" conforming to City planning policies allowing a market to self-solve its housing needs



October 2020 - 6 storeys in 5 weeks

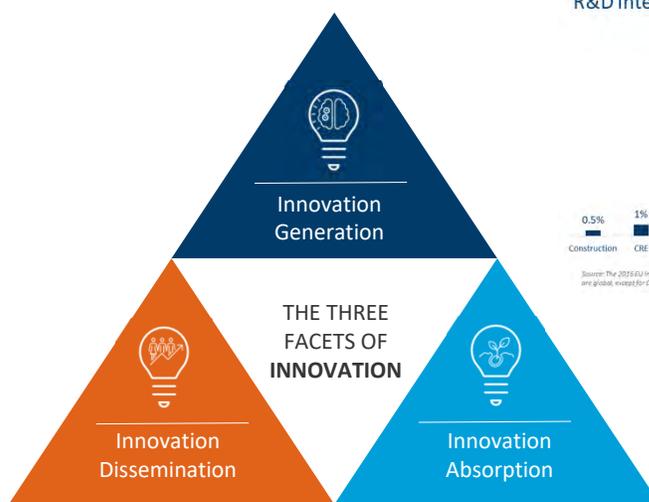
R-Hauz provides owners with turn-key solutions that offer "residential real estate as product" delivering results that are faster, cheaper, smarter and healthier living

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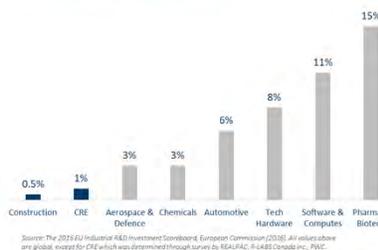
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Understanding Innovation



R&D Intensity By Industry

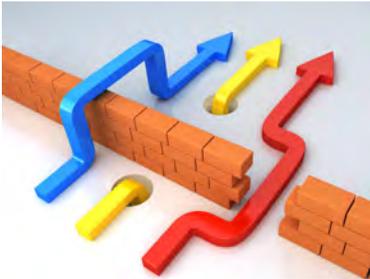


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Barriers to Innovation

What is the biggest barrier to Innovation in The Development Industry in 2021



- A. **Focus** – Too many new technology solutions looking for a problem
- B. **Skills** – Limited training on innovation
- C. **Capital** – Lack of innovation funding
- D. **Risk** – Disruption to stability of core business
- E. **Limited Time** – People are too busy
- F. **Motivation** – Lack of reward



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2021

DISCUSSION:

AFFORDABLE HOUSING – OPPORTUNITY AND CHALLENGES

2:30 P.M. - 3:10 P.M.

Brad Bradford, City Councillor, Ward 19, City of Toronto
Deanna Chorney, Registered Professional Planner, City of Toronto

07

DISCUSSION MEMBERS

DISCUSSION

Affordable Housing – Opportunity and Challenges
hosted by Brad Bradford.



**BRAD
BRADFORD**

City Councillor,
Ward 19
City of Toronto



**DEANNA
CHORNEY**

Registered
Professional Planner
City of Toronto



LANDPRO
CONFERENCE
2021

PRESENTATION:

AUTOMATED PARKING SYSTEMS

3:10 P.M. - 3:50 P.M.

Colin Barksby

Managing Director

Kingfisher Technical Solutions Ltd.

Thomas Woodhall

Senior Associate

BA Consulting Group **Ltd.**

08

SPEAKER



COLIN BARKSBY

Managing Director,
Kingfisher Technical Solutions Ltd.

Presentation:

Automated Parking Systems

Automated Parking Systems (APSs) such as robotic and puzzle parking offer an alternative solution to maximizing parking capacity and enabling parking solutions in traditionally less feasible locations. In this presentation Colin Barksby and Thomas Woodhall, two foremost experts, will explain how APSs are designed, integrated, operated and managed, and share with us some of the opportunities and challenges the development industry faces when considering these solutions.



Introduction to Automated Parking Systems
(APS)



Colin Barksby ^{MIET CMILT}

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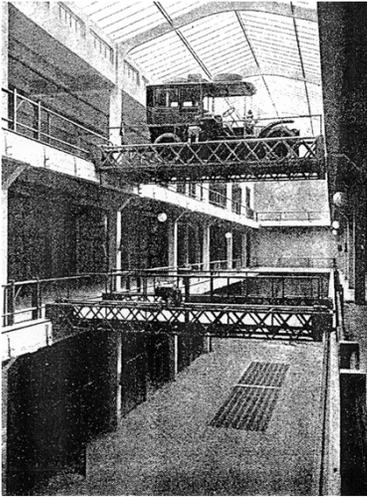
Topics

- History
- Benefits & Features
- Technologies
- Specifications/Availability/System Performance
- Case Study
 - GTA Projects
- Early Engagement in the design process BA
- Sustainability
- Electric Vehicle Charging
- Future (AI)
- After sales support and maintenance
- Approval process BA

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History



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3

History-Canada



Jameson House



Massey Tower

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The Eddy



St Charles Market

4

APS Benefits



- Reduction in space and or volume required per vehicle
- Sustainable alternative to conventional parking methods
 - (increased **LEED** scores)
- Reduced project construction time
- Reduced excavation and civil works
- Increased personal and vehicle security
- Increased project return on investment

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Case Study – super-high-end residential



London penthouse in former US embassy sells for £140m



The residents, who pay from £8 million, will also have access to a spa, a 25m swimming pool, a games lounge, a private screening room, a residents' lounge, a business suite, a 24/7 concierge and “embassy-level security”. ***They also get what is believed to be the UK's largest and fastest automated parking system:*** they can call down to the concierge as they leave their apartment and the car will be outside waiting by the time they get downstairs

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Case Study



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Case Study



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Case Study (internal view of technology)



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Case Study

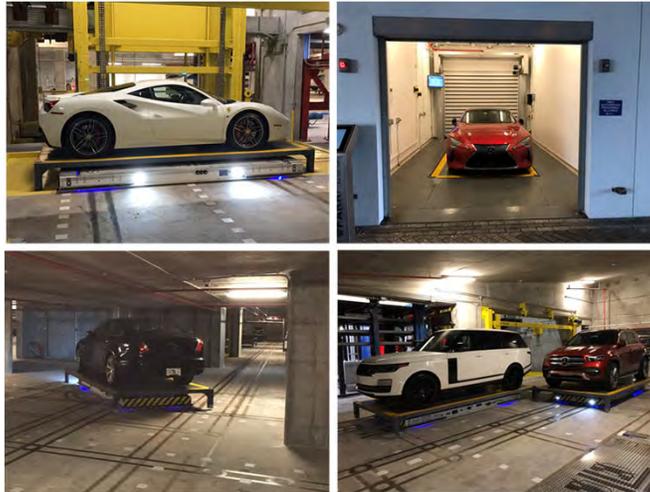


• Conventional car park cost	£3,6 M
• Shuttle car park cost	£6,1 M
• Office cost	£4,1 M
• Combined office & shuttle APS cost	£10,2 M
• Office sale price	£25,1 M
• Return on investment (ROI)	£ 14.8 M

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Technologies-AGV



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Technologies-Shuttle



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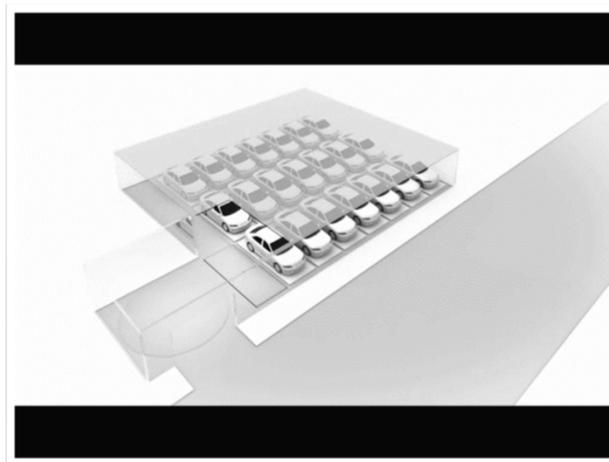
Technologies-Puzzle



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Videos



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Videos



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Videos



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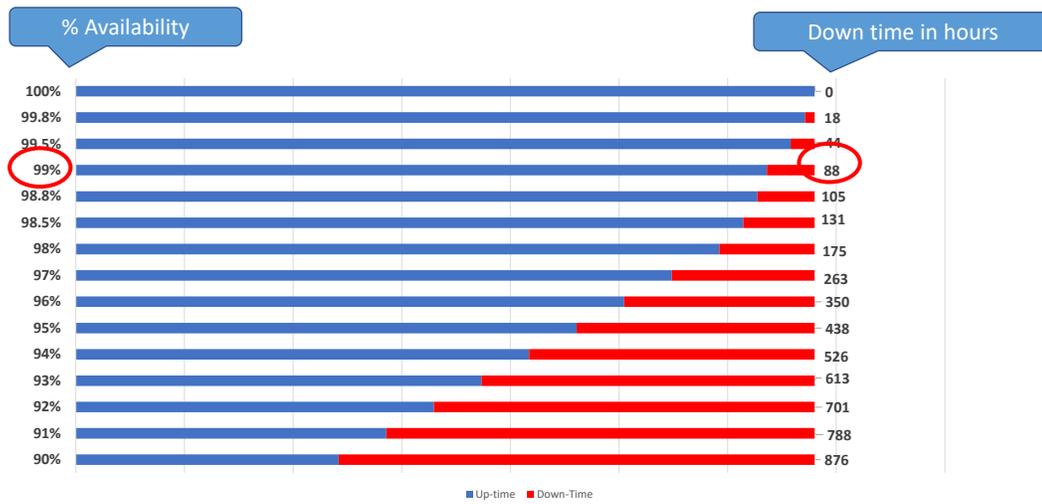
Videos



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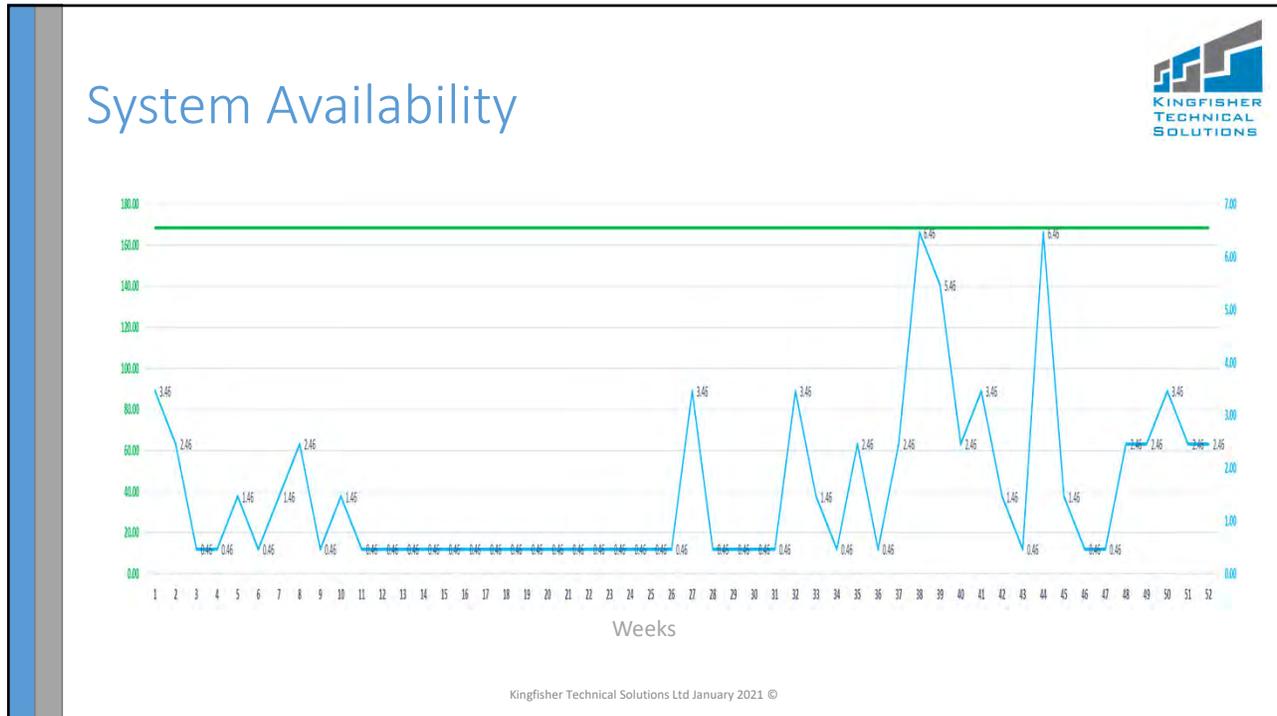
17

System Availability

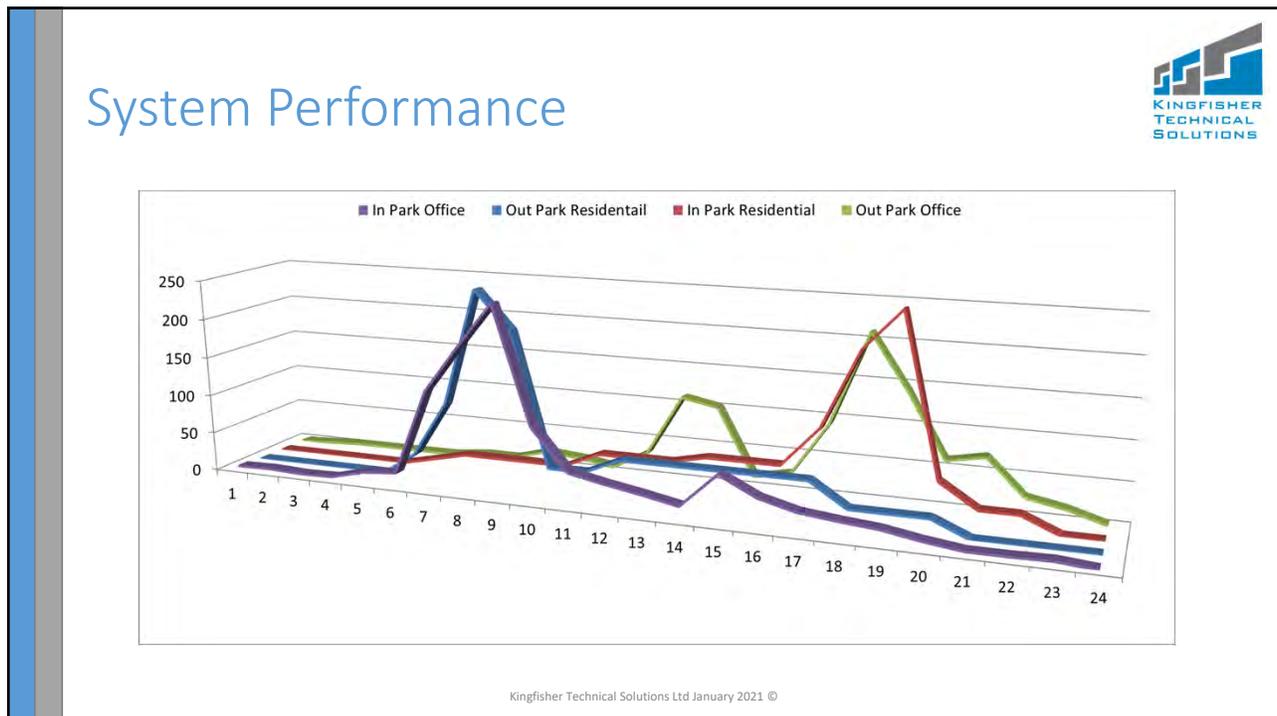


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Sustainability (LEED)

- SS Prerequisite 1 - Construction Activity Pollution Prevention
- SS Credit 1 – Site Selection
- SS Credit 4.3 - Low-Emitting and Fuel-Efficient Vehicles
- SS Credit 4.4 - Parking Capacity
- SS Credit 5.2 - Maximize Open Space
- SS Credit 6.1 - Stormwater Design, Quantity Control
- SS Credit 6.1 - Stormwater Design, Quality Control



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Sustainability (LEED)

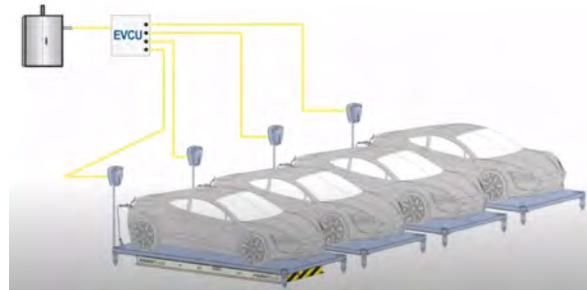
- SS Credit 8 - Light Pollution Reduction
- Prerequisite 2 - Minimum Energy Performance
- EA Credit 1 – Optimize Energy Performance
- EA Credit 2 – On-site Renewable Energy
- MR Credits 1.1 & 1.2 – Building Re-use
- MR Credit 2 – Construction Waste Management
- MR Credit 3 – Materials Reuse



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Electric Vehicle Charging



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Tom session



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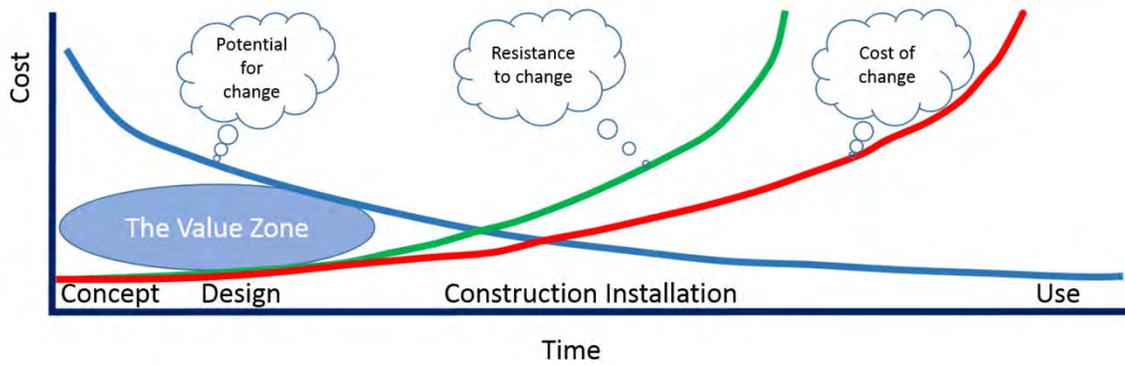
Thank you Tom



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The Value Zone



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Special projects



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After sales support, & maintenance



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Future



- Kingfisher Technical Solutions (KTS) to specify the use of Artificial Intelligence (AI) and Internet of Things (IOT) in future tenders for automated parking systems (APS).
- Incorporating the latest technology will benefit parking system users and building managers with real time information on system use, reliability and system performance.
- Machine Learning will automatically optimise parking and storage transactions providing a greater user experience and higher vehicles per hour (VPH) processing capability.
- Condition monitoring of electro mechanical components will support better planned preventive maintenance regimes, reduce operating costs and build system reliability.
- The Vertical Transport industry has started to implement AI and IOT and soon the automated parking industry will follow.
- KTS is engaging with leading APS industry who are looking to adopt AI and IOT technology



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Thank you



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SPEAKER



THOMAS WOODHALL

Senior Associate,
BA Consulting Group Ltd.

Presentation:

Automated Parking Systems

Automated Parking Systems (APSs) such as robotic and puzzle parking offer an alternative solution to maximizing parking capacity and enabling parking solutions in traditionally less feasible locations. In this presentation Colin Barksby and Thomas Woodhall, two foremost experts, will explain how APSs are designed, integrated, operated and managed, and share with us some of the opportunities and challenges the development industry faces when considering these solutions.

Approvals



- Process
- Land Use & APS Users
- Functional Requirements
- Municipal Compliance
- Timing



Thomas Woodhall, P.Eng., RSP1
Senior Associate

MOVEMENT IN URBAN ENVIRONMENTS 1

1

Approvals - Process



- Municipal approvals can be straightforward
 - Depends on the sophistication of the municipality
 - Have they approved an APS-related project in the past?
 - You should plan for an ‘education’ period to help bring staff on-side with your proposal

MOVEMENT IN URBAN ENVIRONMENTS 2

2

Approvals - Use & Users



- You'll be asked:
 - What is the project's land use?
 - Who will be using the APS?
 - Can they be "trained"?
 - How much parking, and what "type" of parking is proposed to be provided in the APS?

3

Approvals - Functional Req'm



- For your land use:
 - How many cars are arriving or departing?
 - How fast do they need to access the system?
- Are you able to provide complementary users for the system?
- Detailed analysis will be required to determine the queuing impacts. Design work will be required to accommodate the impacts on site

4

Approvals - Municipal Compliance

- Do you meet the dimensional requirements set out in the applicable by-laws?
 - Barrier-free parking
 - Electric Vehicle charging

5

Approvals - Timing

- Selecting an APS technology early in the process will benefit project timing significantly
 - Path to approval – Rezoning or Minor Variance
- Have you designed the building to accommodate the APS, or the APS to accommodate the building?

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