

## Submissions on Bill 106 – Amendments to the *Condominium Act*

Daniel M Campbell

With the exception of the two amendments addressed below, the amendments proposed in this Bill are helpful. However, they simply scratch the surface, and I urge the Minister to initiate a full review of the *Condominium Act* to resolve the many inconsistencies and ambiguities that have crept into the Act over the years.

The amendments that I submit are not helpful and are probably harmful are:

### **1. Section 13 of Bill 106, amending s. 32(1) of the *Condominium Act***

Section 32 of the Act provides that any addition, alteration of improvement or renovation of the common elements must be approved by a vote of owners of 80% of the common elements if the change is "substantial" or a majority of owners for all other changes. Note that this is not a majority at a meeting – it requires the appropriate majority of *all owners in the condominium*, which involves a canvassing process that takes at least a month in a large condominium development.

This process is in theory required for every addition, alteration, improvement, or renovation – essentially, everything that the Board does with respect to the property. This is quite impractical – Boards can function only by judiciously ignoring this requirement. **The proposed amendment will make the present situation worse by raising the vote requirement for less-than-substantial changes.**

The Canadian Condominium Institute – Nova Scotia Chapter recommended that this section be subject to a threshold within which the Board can act. They said:

" ... we think a requirement of a 66 2/3% vote for all matters would make it impossible for the Board to carry on the duty they were voted onto the Board to perform. ... if you have a 200 unit building that requires a 66 2/3% ownership vote to spend \$2,500, this prevents Boards from being able to govern."

**Submission:** I submit that the Committee recommend that a threshold be inserted in the *Condominium Act*, by adding a provision to the following effect to Section 32:

- (4) The vote required by subsection (1) is not required for an addition, alteration or improvement to, or renovation of, the common elements**
- (a) which is included in the Reserve Fund Study of the corporation; or**
  - (b) the cost of which is less than 5% of the annual budget of the corporation.**

## 2. Section 14 of Bill 106, adding s. 37(1A) of the Act

During the recent State of Emergency, condominium corporations were authorized by the emergency orders to hold virtual meetings of owner-members. Many found this very convenient and effective. Unfortunately, this authority has not been continued under these amendments, so each condominium corporation will now each have to amend its By-laws to permit such meetings.

Closely related to the idea of virtual meetings is the idea of electronic voting and the delivery of notice by electronic means. I applaud the drafters of this legislation for addressing voting, but suggest that the way they have done it will restrict rather than facilitate such voting.

First, the amendment permits voting "where permitted by the declaration and by-laws of the corporation". This adds nothing – voting methods could always be permitted by the declaration and by-laws. The legislation will not make it easier for corporations, and it will still be necessary for any corporation that wishes to use this sort of voting to amend its constating documents, a time-consuming and expensive process.

Second, and more troubling, by referring only to the obsolescent technologies of fax and email, the section may preclude the use of any other more modern technology – technology which would be available under properly drafted by-laws in the absence of this language.

**Submission:** I submit that the Committee recommend either that this section be deleted from the Bill, or that it be revised to provide:

**(1A) Where by this Act owners or members of corporations are required or permitted to vote on or consent to an action by the corporation, including an amendment to the declaration, the description, or the by-laws, that vote or consent can be given by any electronic means reasonably considered by the Board to be reliable.**

Respectfully submitted, April 3, 2022



Daniel M Campbell