



## November 2013

### *Gordon v. York Region Condominium Corporation No. 818 [2013] (unreported)*

In this case, the corporation removed a director from the Board pursuant to a by-law passed by the corporation. The by-law outlined various criteria upon which a director could be removed from the board prior to the expiration of his or her term, as well as the procedure to be followed. This included a director's code of ethics and a procedure for an ethics review. Upon his removal, the former director applied to the court seeking an Order establishing that his removal was invalid, and that the by-law permitting such removal was in violation of section 33 of the *Condominium Act, 1998*. The major questions considered by the Court were the following: (1) could a director be removed without the support of a majority of unit owners; and, (2) what process is to be followed to remove a director?

Section 33 of the *Condominium Act, 1998*, states:

s. 33—"Subject to subsection 51 (8), a director, other than a director on the first board, may be removed before the expiration of the director's term of office by a vote of the owners at a meeting duly called for the purpose where the owners of more than 50 per cent of all of the units in the corporation vote in favour of removal."

Section 56(1)(a) of the *Condominium Act, 1998*, further establishes that a board may make a by-law that governs the removal process of a director. The Court found that removing a director may go beyond the onerous process of a majority of unit owners voting in favour. The Court held that a removal process may, via by-law, be expanded to include in this case a director's alleged breach of a code of ethics. That said, the Board was found to have breached due process, and the matter was referred back to the Board for reconsideration.

**Bottom Line:** Section 33 of the *Condominium Act, 1998*, establishes that a director may be removed prior to the expiration of his or her term, if the owners vote in favour of such removal at a duly constituted meeting. This case confirms that condominium corporations are permitted to pass by-laws which expand the methods to remove a director. Provided a board follows the process laid out in the relevant by-law, the removal of a director may be expanded to include (a) chronic absenteeism; (b) a director who sues a condominium; (c) a director who is found to have breached a code of ethics; or (d) a director who is deemed by a board to have violated the *Condominium Act, 1998*. Condominiums would be well served to consider passing by-laws to expand the ability to remove a director, without having to achieve the support of a majority of unit owners.

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