



April 10, 2017

**BY EMAIL**

**Ministry of Government and Consumer Services**

Michèle Sanborn, Director  
Policy and Governance Branch  
Policy, Planning and Oversight Division  
6th Floor, 56 Wellesley St. W  
Toronto ON M7A 1C1

Dear Ms. Sanborn,

**Re: Regulatory proposals under the *Condominium Act, 1998* and the *Condominium Management Services Act, 2015* relating to the Condominium Authority Tribunal**

On behalf of the Ontario Bar Association (the “OBA”), I am writing in relation to the proposed regulations supporting the establishment of the Condominium Authority Tribunal (the “Tribunal”) under the *Condominium Act*, and in particular, with respect to the publication of Orders and decisions by that tribunal.

***The OBA***

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing more than 16,000 lawyers, judges, law professors and students. OBA members are on the frontlines of our justice system in no fewer than 40 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

This submission has been prepared primarily by the OBA’s Administrative Law section, with input from the Real Property Law and Privacy Law sections. Collectively, these sections represent more than 1300 lawyers who have experience working with and appearing before a wide range of tribunals and statutory decision makers, in addition to courtrooms across the province.

### *Publication of Orders*

The proposed regulations indicate that, in making its orders public, the Tribunal would not be able to disclose the following personal information:

1. The name of an individual, unless the name identifies the individual in a business, professional or official capacity.
2. The unit number and street number from an individual's address, unless the information identifies the individual in a business, professional or official capacity.
3. Other personal information if, despite the non-disclosure in points 1 and 2 above, the information could reasonably lead to the identification of an individual, unless the information identifies the individual in a business, professional or official capacity.<sup>1</sup>

We encourage the Ministry to further review this proposal to consider whether there should be some discretion vested in the Tribunal in regard to such disclosures and, if so, the extent and conditions under which such discretion should be exercised.

We suggest this further review having regard to two principles: that of the desirability of administrative tribunals being as open as possible in the adjudication of public statutes balanced against countervailing privacy considerations. We appreciate that there may be reasonable differences as to where the balance may lie in any given case.

We also note that other jurisdictions, in enacting legislation for tribunals with a similar purpose, have chosen an alternative approach to the one proposed: vesting discretion in the tribunal with respect to such information. The British Columbia tribunal dealing with condominium disputes discloses personal information through published orders, including the names of individuals, but permits the tribunal to redact or anonymize.<sup>2</sup> That tribunal has published a policy that indicates that such information can be redacted or anonymized on request.<sup>3</sup>

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<sup>1</sup> Ministry of Government and Consumer Services, March 2017. Description of Proposed Regulatory Changes under the Condominium Act, 1998 and the Condominium Management Services Act, 2015. Retrieved from

<http://www.ontariocanada.com/registry/showAttachment.do?postingId=23762&attachmentId=33916>

<sup>2</sup> *Civil Resolution Tribunal Act*, SBC 2012 c. 25 section 86(3).

<sup>3</sup> BC Civil Resolution Tribunal Decisions and Privacy Policy. Retrieved from

<https://www.civilresolutionbc.ca/crt-decisions/> and <https://www.civilresolutionbc.ca/data-collection-storage-and-privacy-policy/>.

Thank you for the opportunity to provide this input. We would be pleased to discuss these matters with you in further detail.

Sincerely,

A handwritten signature in black ink, appearing to be 'CW', written in a cursive style.

Christopher H. Wirth  
Chair, Administrative Law Section  
Ontario Bar Association