



Ontario Association of Architects

January 7, 2013

Mr. David Brezer  
Director, Consumer Policy & Liaison Branch  
Ministry of Consumer Services  
College Park  
5th Flr, 777 Bay St  
Toronto ON M7A2J3

**Re: *Condominium Act* Review**

Dear Mr. Brezer:

I am writing on behalf of the Ontario Association of Architects (OAA) in response to the Ministry of Consumer Services' review of the Ontario *Condominium Act*. We appreciate the opportunity to bring our comments forward for consideration.

As you are aware the OAA is the licensing body and professional association for Ontario's architects established under the *Architects Act* to regulate the practice of architecture "...in order that the public interest may be served and protected." The OAA has a membership that comprises 3,400 licensed architects and 1,300 intern architects. As part of its regulatory mandate, the association provides a wide range of services to its members and the public.

As additional background, the OAA has been actively seeking amendment to the *Condominium Act* since 2008. Unfortunately we have not been able to gain any traction on the matter. We trust that the current consultation process and detailed review of the Act will result in positive action to address the issues.

Specifically, we have already raised two issues as outlined below to the Ministry for consideration on a number of occasions.

Ontario Regulation 48/01 under the *Condominium Act* requires that under section 5 all declarations for registration of a condominium must include a number of schedules, including schedule 'G' which is to be completed by an architect.

**1. Schedule G: Warranty Wording Compromises Public Interest**

Statement 1 of Schedule G states: "*I certify that... The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant...*"

As worded, it is a warranty of performance of the building envelope. A “warranty” cannot be covered by Professional Liability Insurance.

As a result Statement 1, as worded may lead to denial of the required Professional Liability Insurance and by extension, loss of the protection of the public who have the right to expect availability of insurance to fund compensation for any damages.

A change in the wording is required to eliminate any “warranty” by an architect signing such a statement, thus avoiding potential loss of the protection provided to the public by professional liability insurance as required by the *Architects Act*.

## **2. Schedule G: Inappropriate Wording for “Conversions” of Existing Buildings**

Statement 1 of Schedule G states: *“I certify that... The exterior envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and had been completed in general conformity with the construction documents.”*

When the Regulation was put into place along with the accompanying forms and schedules, Schedule G was designed for new condominiums and did not take into account conversions of previously constructed buildings.

Architects being asked to sign this document as required under the legislation may be putting themselves at risk by assuming liability for work (potentially deficient) that they had not originally observed during construction or that has subsequently deteriorated.

The statement is inappropriate in the context of a conversion of an existing building to a Condominium for a number of reasons:

- A current architect most often will not have access to the applicable construction documents for the existing building.
- The construction of the existing building will have been completed at an earlier time and the current architect will likely have had nothing to do with the original project.
- There is no reasonable expectation that an architect today could “certify” whether or not a building built in the past had been completed in “general conformity” with the construction documents even if the documents were available. Simply put, they were not there to observe the construction.
- Unless the listed elements are completely replaced as a part of a project where an architect has been engaged to provide construction documents and site review services, no consultant could / should provide any form of statement respecting these issues.

Statement 1 of Schedule G as currently written, presumes that the construction is contemporary with signing the Schedule, and that the signer was responsible

for preparing a set of construction documents and was able to review the actual construction. This set of circumstances cannot apply to the building envelope and the listed components where an existing building designed and constructed some time previously for another use and ownership model is being converted to Condominium ownership.

Any statement related to the adequacy of the construction or general conformity of the construction with construction documents should not be made by anyone who was not actually involved in the original construction. It is unreasonable to request an architect to certify critical aspects of construction that are not visually apparent or work that cannot be assessed given that the structure is complete.

An alternate statement that makes sense in the context of a "conversion" is required.

In addition to the above noted concerns previously brought forward, the OAA is participating in a roundtable discussion directly with architects who do provide services on condominium projects for the purpose of validating additional concerns that have been raised relative to the Act. Our intention is to therefore make a second submission early in the New Year that will provide further detail and verification of these additional issues. We understand that the consultation process does include a number of phases and that more detailed comment from organizations such as the OAA will be solicited during Phase Two.

In the meantime, the Ministry's consideration of these two specific issues is requested in the context of the current consultation process.

We look forward to continued discussion as the Ministry proceeds with the consultation process. If you have any questions regarding the above noted issues please contact me directly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kristi Doyle". The signature is fluid and cursive, with the first name "Kristi" written in a larger, more prominent script than the last name "Doyle".

Kristi Doyle, Hons. BA (PPA), Hon. MRAIC  
Executive Director

Copy to: *Condominium Act Review at: [oncondo@ontario.ca](mailto:oncondo@ontario.ca)  
OAA Council*