



## Condo boards look to balance renovations with public health

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Ontario has shut down many sectors of its economy in the face of the coronavirus pandemic, but the residential renovation industry has continued – despite concerns about the access given to work crews in multifamily buildings.

“Residential renovations are an essential service, but a lot of our buildings aren’t letting renovators in,” said Audrey Loeb, partner at Shibley Righton LLP. Ms. Loeb is part of an 11-lawyer team serving as corporate counsel for hundreds of condo corporations. There are more than 12,000 condo corporations in Ontario.

“There’s no guidance ... no uniformity,” she said. “Everybody is making up their own rules. We don’t have people in the government who are considering these issues,” she said.

On April 3, as part of its emergency orders on social distancing, Ontario published a shortened list of essential workplaces, trimming some industries such as industrial construction from its first bulletin issued March 23. Among the workers allowed to continue are those where the “project involves renovations to residential properties and construction work was started before April 4, 2020.”

This comes despite some condo boards already taking action to limit non-residential access to their buildings.

For instance, on April 3, York Condominium Corporation No. 419 (the legal body that owns the 21-unit boutique condo building at 55 Carscadden Dr. in Toronto) had an emergency hearing by phone with Ontario Superior Court Justice Frederick L. Myers to block an ongoing renovation from continuing. As the Justice summarized it in granting his injunction: “The condominium corporation asks for an urgent injunction prohibiting the respondents from having third-party tradespeople attending in the building on an interim basis during the global COVID-19 pandemic. This is a matter of great urgency. A majority of the condominium building’s residents are seniors.”

The action was brought by Caleb Edwards, an associate with Miller Thompson’s condo law group, and the Justice’s order describes the back and forth with owners Seth and Cashema Black: “The condominium corporation expressed some concern because it appeared that two painters had attended at the Blacks’ unit this morning. Ms. Black advised that they are old friends who just happen to be painters visiting at a time when her renovations are at the painting stage.”

Ultimately, Ms. Black agreed that no more renovations would continue for now, but also sought time to obtain counsel to fight the injunction at a future hearing in June.

**“The real distinction is: shelter is a need,” said Richard Lyall, president of the Residential Construction Council of Ontario. He thinks, for example, finishing a renovation to make a space habitable fits within the government’s mandate. “That doesn’t mean ‘I want to renovate my kitchen now and that’s essential,’ I don’t think that is, personally. Painting? That’s not an essential service at this time. To a certain extent we have to rely on the good judgment of people.”**

Ontario, as of April 13, had 7,470 confirmed cases of COVID-19 and 291 deaths attributable to it.

In response to health concerns on construction sites, 60 new Ministry of Labour inspectors have been hired. According to Premier Doug Ford, in the first week of the stepped-up surveillance there were 583 inspections and five sites were shut down.

Another boutique condo building, the Oaklands on 40 Oaklands Ave. near Avenue Road and St. Clair Avenue West, brought in a by-law on March 26 that impacted its 65 unit-holders, but was primarily aimed at three on-going renovations. “During this time, no contractors, tradespeople or other renovation personnel are to enter the premises of 40 Oaklands Ave. In addition, during this period, the board will not approve any new renovation projects in the 40 Oaklands tower building,” the resolution reads.

“Most of the condo owners I know doing wholesale renovations, they are not poor people ... they can afford to go to lawyers and write a threatening letter,” Ms. Loeb said. “I don’t want to be faced with a bunch of lawsuits because their renovations didn’t get done.”

“Business owners and condominium corporations, must take the necessary steps to keep their employees, clients and customers safe, and ensure that they are following the Emergency Order,” said Matteo Guinci, a spokesperson for the Ministry of Government and Consumer Services. In a follow-up statement he also said that while the ministry can’t provide legal advice: “The Condominium Act provides a legal framework that enables unit owners and their elected board of directors to make decisions about the governance of a condo property.”

Ms. Loeb contends that framework doesn’t clarify how to resolve conflict between typical property rights and emergency public health orders. Treating each case as a one-off subject to the judgment of owners and boards makes for a mish-mash of results, when a rule across the province would clarify matters for everyone living in multifamily situations.

“What nobody has said to the condo boards is ‘you’re entitled to make reasonable decisions,’” she said.