ACMO TECH

2008 GUIDELINES FOR BUILDING MANAGEMENT • NO. 42

Clothesline Regulation — No Longer "Not In Your Backyard"

By Michael Clifton, BA, LLB

Association of Condominium Managers of Ontario
2233 Argentia Road
Suite 100
Mississauga, Ontario
L5N 2X7
Phone: 905-826-6890
1-800-265-3263
Fax: 905-826-4873
E-mail: info@acmo.org
Web: www.acmo.org

Background

For many years, municipalities and developers have imposed restrictions on properties to prohibit the use of clotheslines. The reasons behind this may vary, but for the most part come down to aesthetics: many people just don't like the look of backyards and balconies covered in their neighbours' laundry.

Today, however, environmental concern has prompted interest in returning to lifestyle choices and practices that many of our parents and grandparents would have considered, as the Japanese would say, *atarimae* – natural, or, more literally, right on the mark.

On April 18, 2008, the Ontario government announced it had fulfilled its promise made earlier in the year to impose a ban on the ban against clotheslines. The day prior, Ontario Regulation 97/08 – hereinafter, the "Clothesline Regulation" – had come into effect on the day it was filed.

In response to these shifting values, the Government of Ontario enacted, in 2006, section 3 of the Ontario *Energy Conservation Leadership Act, 2006* (ECLA), which permits the government, by regulation, to designate certain goods, services and technologies in order to *"[remove] barriers and to promote opportunities for energy conservation"*.

The effects of a regulation made under section 3 are:

(a) to render any restriction imposed at law that would otherwise prevent or restrict the use of such designated goods, services or technologies, inoperative; and

(b) to permit the use of such designated goods, services and technologies *"in such circumstances as may be prescribed, despite any restriction imposed at law that would otherwise prevent or restrict their use, including a restriction established by a municipal bylaw, a condominium bylaw,*[1] *an encumbrance on real property or an agreement."* However, restrictions imposed by other legislative enactments (statutes and regulations made by the government of Ontario or higher authority) are not affected.

The Clothesline Regulation is made pursuant to this section of the ECLA.

Intended and Actual Effects

The Clothesline Regulation is the government's first section 3 regulation since the ECLA came into effect. The concept behind it is simple. It is based on the belief that if a person hangs only 25%

of his or her laundry out to dry, rather than use electric clothes dryers, that person should save about $30 per year in electricity bills, and society will enjoy the corresponding benefits of reduced energy consumption and greenhouse gas emissions.[2] (This memo does not examine the validity of those claims.)

The intended effect of the Clothesline Regulation is to render inoperative any legal impediment to the use of almost any:

- clothesline,
- clothestree,
- anything having the same purpose as a clothesline or clothestree (and no other purpose), and
- equipment necessary to install and use the same.

It is important to understand that not every restricted use of a clothesline, etc., is affected by this regulation. As set out in the Clothesline Regulation, the only circumstances affected are those where:

1. the property where the equipment is installed includes a house or building used exclusively for residential purposes and where the person installing the same lives;

2. the equipment is installed in a manner that ensures there are no impediments to safety, including (but not limited to) impediments to access or egress from the house or building on the property;

3. the equipment is installed on a rear or side wall of the house or building so that it can be used by someone: (a) standing directly on the ground; (b) standing on a deck or other fixed platform that is (1) accessible from the ground floor of the house or building and (2) is not higher than the floor level of the ground floor; (c) standing on a step-stool (or similar device) that is placed directly on the ground or directly on a deck or other fixed platform meeting the foregoing criteria; and

4. the equipment are installed in an area *"where the person has an exclusive right of use by virtue of their residency."*[3]

It appears from the manner in which the regulation is worded that all of these criteria must be met in order for the regulation to affect an existing prohibition against clothesline use.

Accordingly, the Clothesline Regulation does not affect restrictions against clotheslines, etc., in any other circumstances, including the following:

1. where the property contains only a building used for nonresidential purposes, or for mixed residential and nonresidential purposes;

2. where the person using the equipment is not a resident;

3. where the equipment cannot be installed without creating unsafe conditions, or without blocking ingress/egress routes to and from the homes on the property;

4. where the equipment cannot be installed so as to be accessible from the ground or from a deck or other fixed platform accessible from and level to the ground floor of a building; or

5. where the person does not have exclusive use (by virtue of residency) of the area in which the clothesline is installed.

It should be noted that what the Clothesline Regulation does *not* do is *require* anybody to use clotheslines, clothestrees or any similar device. All that the regulation seeks to do is lift prohibitions against such uses (in those circumstances where it applies). Surely the government hopes to encourage such use, but anyone who really doesn't want their underclothes hung for the world to see is, so far, not compelled to do so.

Application to Condominiums

One article located on CTV.ca[4] concludes with the remark that,

The new regulation…applies to detached and semi-detached homes and most row houses.

Highrise condominiums and apartments will not be affected for now…

While essentially accurate, that comment is not quite correct. In this writer's view, there are situations in highrise condominiums and apartments where the

Clothesline Regulation *could* have effect. There are also many situations even in detached, semi-detached and row houses where it *may not*.

The fact is, the Clothesline Regulation says nothing about the types of home to which it applies, but describes (as set out above in this memorandum) only the kinds of circumstances in which it will apply.

So, the question we've been asked a lot lately – *does the regulation apply to condominiums?* – can only be correctly answered in one way: "yes and no".

In other words, it *does* apply to condominiums generally, but *not to all* condominiums specifically. It is also possible that the regulation will apply to some units within a condominium and not to others.

To determine whether the Clothesline Regulation applies to your condominium, or your unit, requires determining whether your condominium or unit satisfies the conditions necessary for it to apply.

Obviously, therefore, whether the Clothesline Regulation applies cannot be determined in the abstract, but a few examples might assist:

(a) CONDO X contains row houses used exclusively for residential purposes. Each row house is a unit and provides exclusive access to a rear yard that is partially enclosed (although not designated "exclusive use" areas in the condominium documents). The ground level rear door of each unit opens directly onto a deck in the rear yard, which is at the same height as the ground level of the home. There is room for a clothesline or clothestree to be erected that is easily accessible from the deck or using a stepstool placed on the ground and does not block access to the rear door, or escape from the rear yard, or otherwise hinder safe movement through or about the rear yard. The Clothesline Regulation would apply. Restrictions against clotheslines, etc., are rendered inoperative.

(b) CONDO Y contains row houses. The ground level of each unit is for commercial use only, and the upper levels are residential. Each unit has exclusive use of a fully enclosed rear or side yard in which a clothesline or clothestree can be safely installed without blocking any access route in or out of the unit. Since the buildings/homes are not exclusively for residential use, the Clothesline Regulation will not apply and restrictions against clotheslines, etc., remain operative.

(c) CONDO Z is a highrise residential condominium. Upper floor units have exclusive access to balconies. Ground floor units have patios that are level with the ground floor and designated as exclusive use areas. Partial privacy fences or trees exist that could be used to connect a clothesline from the exterior wall of the unit so that the patio door from the unit is not blocked. No unsafe condition would be created by the clothesline being connected in this manner and location. The Clothesline Regulation would apply to permit clotheslines use by residents of the ground floor units only.

These are examples of possible situations only. Even if your situation seems similar to these, I would recommend carefully reviewing the provisions of the Clothesline Regulation to determine whether or how it might apply to your condominium. The advice of legal counsel is generally advisable when seeking to interpret and apply statutes.

Conclusion

It is fairly certain the Clothesline Regulation is only the first in what is likely to become a series of increasingly far-reaching and, likely, controversial section 3 regulations under the ECLA.

For what it is worth, in this writer's opinion the Clothesline Regulation seems to be a good start, and, in particular, a good example of environmental legislation the way it should be done. While its subject matter is not so monumental, it appears to do two things right:

1. it advances the interests of those concerned about the environment by removing unnecessary restrictions against an environmentally sound and beneficial practice; and

2. it considers and seeks to protect the interests of those who might be harmed by such practice.

Whether or not this assessment of the regulation is accurate, and whether or not future regulations made pursuant to section 3 of the ECLA will be similarly well crafted are matters that are yet to come out in the wash, so to speak.

End Notes

1. Note that this does not mean that restrictions in condominium documents other than the bylaws are not affected by such regulations. We pointed out to the government, when this section was drafted, that the reference to condominium bylaws could be misleading since, generally, such restrictions would not be found in a bylaw as they are not their proper subject matter. It is more appropriate and more likely that such restrictions would be included in the condominium declaration or rules. The point is moot, however, since the reference to condominium bylaws is only by way of example. Provisions in a declaration or rule should also be captured by the catch-all expression, *"any restriction imposed at law"*.

2. As stated in the government and media releases; e.g., see news releases posted on CTV.ca (search, for example, "clothesline regulation Ontario").

3. Note that the use of "exclusive use" here is different from its use in the *Condominium Act, 1998*. Under the *Condominium Act, 1998*, a part of the common elements of a condominium is only considered an "exclusive use" area if such designation is set out in the proper manner in both the declaration and description of the condominium. Thus there can be parts of the common elements that a unit owner uses exclusively – such as the windows and doors to his or her unit – but that are not actually their "exclusive use" areas. However, under the Clothesline Regulation, "exclusive use" is determined by virtue of residency. Therefore, even where rear yards, for example, are not specifically designated as "exclusive use" areas pursuant to the *Condominium Act, 1998*, they may be considered "exclusive use" areas for the purposes of the Clothesline Regulation.

4. "Ontario premier lifts outdoor clothesline ban" April 18, 2008, 6:49 PM ET; found at www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080418/clotheslines_ban_080418/20080418?hub=CTVNewsAt11

Michael Clifton, BA, LLB, is a partner in the law firm Clifton Kok LLP. We thank him for allowing us to reprint this article for ACMO members in ACMOTech.