

WHO'S THE BOSS?

Unlike the stereotype-challenging fun of the 1990's TV show, "Who's the Boss?" the question of who holds the reins of leadership in condominium corporations can often be a source of ugly contention. This usually arises in two main contexts: unit owners vs. the board; and the board vs. management. Although managers often end up caught in the middle of each of these conflicts, the most relevant to your regular, day-to-day business is the second one: who, between you and the board, is the boss?

Most of you probably know the default answer: it's the board.



The *Condominium Act, 1998*, sets out that when a condominium corporation is created, its reason for being and its primary duty is to "manage and administer the common elements and the assets of the corporation" (s. 17(2)) and the role of its board of directors is to "manage the affairs of the corporation" (s. 27(1)).

So, if the corporation is the manager of the property, and the board is the manager of the corporation, where do condominium managers fit in?

The *Condominium Management Services Act, 2015*, helps to clarify the answer by indicating that "condominium management services" include, specifically, services related to collecting and holding unit owners' contributions to the common expenses, and, more generally, "**exercising delegated powers and duties of the corporation or its board of directors**". Basically, the only authority a condominium manager or condominium management service provider has, is the authority that the board gives (delegates) to it.

A few principles follow from these facts, including these:

1. Condominium managers only have those duties that are delegated to them; so don't try to do more than you should. You don't replace the board; you serve them.
2. Serving the board doesn't make you their slave. If you are being asked to do more than your contract calls for, you can refuse (or, as many contracts provide, charge more for the additional work).
3. You can also refuse to do what you are asked, when you are being asked to do what is wrong (though that doesn't always mean that you can also stop the board from doing it).

That last issue is one that comes up time and again, and it is important to distinguish between two types of wrong-doing. One, is where what the board is demanding is strictly illegal. It goes without saying (though we are saying it anyway), that you cannot comply with or lend any support to an action, decision or direction of the board that is clearly contrary to the law. You should rather lose your contract than your integrity. The other, is where what the board is demanding is simply unwise, where it might give rise to a liability, but still isn't strictly illegal.

A case in point is one we observed not long ago, where a corporation's board and its manager disagreed over the handling of common expense arrears. The board had determined to withhold taking action under section 85 of the *Condominium Act, 1998*: It did not want to proceed with its lien. Was this unwise? Probably. Was it contrary to what the Act contemplated? Yes. Could it give rise to losses or liabilities? Absolutely. Was the manager required to take a stand and not comply with the board's direction? Absolutely not.

In that case, although what the board demanded fell short of its obligations and the expectations of the Act, it was not a case of strict illegality. The decision was within the board's discretion – it has the right to make the wrong decision – and the manager would not be at fault for going along (though his or her concerns should be clearly made known... preferably in writing).