

**SUBMISSION BY THE CANADIAN CONDOMINIUM INSTITUTE,  
NATIONAL OFFICE  
TO THE CANADIAN HERITAGE COMMITTEE OF THE HOUSE OF COMMONS  
ON THE PROPOSED “NATIONAL FLAG OF CANADA ACT”, BILL C-288**



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## **Introduction**

The Canadian Condominium Institute/Institut canadien des condominiums (CCI), founded in 1982, leads the national condominium industry by providing education, information, awareness and access to expertise by and for its members. CCI has sixteen Chapters across Canada, from Newfoundland and Labrador to Vancouver. Its membership consists of condominium owners and boards, and the professions and trades that provide service to them. Representing almost half a million condominium owners in Canada, it is the only organization dealing exclusively with issues affecting all of the participants in the condominium community nation-wide.

Currently, according to Statistics Canada, some 11% of Canadians live in a condominium. Condominium construction constitutes the largest portion of new homes being built in Canada today, in some areas (such as Ontario) accounting for over half of all new residential construction.

It is our pleasure, on behalf of our members and the condominium community in general, to submit this brief to the Canadian Heritage Committee in its consideration of the proposed “National Flag of Canada Act”, Bill C-288.

### **The “National Flag of Canada Act”**

The “National Flag of Canada Act” was drafted to ensure the rights of Canadians to display our flag are protected. As of this writing, second reading of the Bill is being debated, after which it will be referred to this Committee.

As proud Canadians, both CCI and our members support the intent of the Bill. Because of its sweeping nature, we have consulted our members regarding their concerns and opinions, and are pleased to present this to the Committee for consideration.

### **Background on Condominiums**

In the broadest sense, condominiums (including strata in British Columbia and syndicates in Quebec) are not-for-profit corporations whose members have agreed to share ownership of certain common property while maintaining ownership in fee simple of a residential property (called a unit). The common property, often referred to as common elements, may comprise recreational areas (parks, community centres, pools, etc.), parking facilities, roadways, sidewalks, street lighting, plumbing and sewers, and so forth. Common elements differ from one condominium corporation to the next. The members of the corporation each own a unit; this may be an apartment, a townhouse, or a fully detached house. In some instances, they reserve to themselves what are known usually as exclusive use elements. It is important to note, however, that they are not the sole *owners* of the exclusive use elements – they are simply entitled to their exclusive use subject to prevailing legislation and the condominium corporation’s constating documents.

Condominiums in Canada are governed by provincial/territorial legislation, which provides certain common rules and regulations for their operation. Developers of condominium projects also register documents (often called declarations and descriptions) with their local authority (Registrar of Condominiums, etc.) that may specify further rules and regulations. Finally, each condominium corporation, governed by a Board of Directors, adopts a set of by-laws. It may also promulgate additional rules and regulations, depending on provincial jurisdiction.

The duties of a condominium Board are defined differently in different jurisdictions. Generally, however, they are to provide for the safety, security and quiet enjoyment of the corporation’s property (both

common and exclusive use elements) by the residents, and to preserve the value of residents' investments in the corporation.

By-laws, rules and regulations typically encompass restrictions on what residents may affix to the external walls of their units, display in such a way as to be visible from outside the units, and on personal property that may be used and/or stored outside the units (in or on exclusive use common elements). Apartment condominiums, for example, may prescribe what types of drapes a resident may have, and condominiums of all types may restrict the uses of such things as satellite dishes, clothes lines and barbecues. Often, condominium corporations provide for an application process whereby a resident may seek permission to do something that would otherwise be in violation of the by-laws, rules and regulations. The purpose of these provisions are to ensure that one resident does not infringe upon the rights of others, to protect residents from harm that may result from the actions of one of them, and to preserve the value and appearance of the corporation's buildings. Residents, when purchasing a unit, voluntarily agree to abide by the developer's filed documents, by-laws, rules and regulations. These effectively form a contract between the corporation and its members, the residents.

### **CCI Member Survey**

Under the proposed Act, were it to be adopted as originally drafted, residents **and others** would be able to ignore condominium by-laws, rules and regulations, potentially creating a safety hazard and disregarding the rights of others. CCI conducted a survey of its members across the country between October 18 and November 18. Key findings of the survey are noted below.

Survey questions were divided into four broad sections:

- Identification of potential issues
- Determination of the level of support for the bill
- Recommended amendments to the bill
- Demographic information

### **Summary**

More than half of members felt the bill should be amended before passage, and almost a third were opposed to it. The primary amendment overwhelmingly identified as necessary was the need for an exemption to permit condominium corporations to make "reasonable" rules regarding the display of flags.

The two major concerns cited by respondents regarding the bill was the ability of a person to place a flag on property even if s/he does not own or rent that property, and the reduction in the ability of corporations to set appearance standards for buildings.

### **Question 1 – Potential Issues**

Members were asked to rate the importance of seven issues/concerns with the legislation as introduced. Based on surveys received to date, the ranking is:

- Placement of a flag anywhere, even on property the person displaying the flag does not own/rent – 64.9%
- Reduction of a condominium corporation's ability to set appearance standards for buildings – 60.0%
- Inappropriate use of flags (e.g. as drapes) – 54.9%
- Display of flags in such a way as to pose a safety hazard – 51.3%
- Display of tattered/faded flags, detracting from a building's appearance – 48.6%
- Liability issues resulting from accidents caused by insecurely displayed flags – 43.6%

- Flags blocking the view of other residents – 34.5%

Other concerns included noise from flags flapping in high winds, inequities posed by unrestricted display of the Canadian flag while restricting display of other flags, display of outsized flags, and the clash between restrictions on items used outside a unit (e.g. clotheslines) and the inability to restrict display of the Canadian flag.

## **Question 2 – Support for the Bill**

Members were asked whether they would support the bill without amendment, support it with amendment, or not support it at all:

- Would support with amendment – 58.7%
- Would not support – 32.7%
- Would support without amendment – 8.6%

## **Question 3 – Recommended Amendments**

Members who said they would support the bill with amendments were asked what those amendments might be. Five potential amendments were suggested, and members ranked them:

- Exemption permitting condominium corporations to make “reasonable” rules regarding display of flags – 79.2%
- Restrictions on the size, number and condition of flags displayed – 60.7%
- Requirement that erection of a flag pole and display of a flag on that pole be approved by the condominium Board – 60.1%
- Restrictions on the height/length or condition of flag poles, if they are used – 51.7%
- Outright exemption of condominium corporations from the bill – 20.2%

Other respondents suggested that display of the flag be limited to July 1, and that certain uses of the flag (e.g. as drapes) be prohibited.

## **Demographic Information**

Respondents were asked to provide some basic demographic information. The majority (51.5%) were condominium/strata Board members. Almost two-thirds (62.4%) lived in Ontario/Quebec. The majority (54.1%) lived in apartment-style condominiums.

## **Geographic Breakdown of Responses**

### *Question 1 – Concerns regarding the bill*

Members from Atlantic Canada were most concerned about inappropriate use of the flag (78.4%), reduction of a condominium corporation’s ability to regulate building appearance (77.1%), placement of flags on property not owned/rented by a person (76.3%), display of a tattered/faded flag (69.2%) and the potential for flags to obstruct the view of other residents (47.4%). On the other issues, they were close to the national averages.

Members from Ontario/Quebec, not surprisingly, were close to the national averages on all issues.

Members from the Prairies, while still rating these issues as “most important”, were below the national averages: display of a tattered/faded flag (42.6%), inappropriate use of the flag (50.0%), and placement of flags on property not owned/rented by a person (62.3%).

Only 1.7% of respondents were from BC; this is not statistically significant.

### *Question 2 – Support for the bill*

There were no significant differences between the geographic breakdown and the national average for support of the bill noted above.

### *Question 3 – Recommended amendments*

Respondents from all regions agreed that an exemption permitting corporations to make “reasonable” rules regarding the display of flags was most important. Support for this was lowest in Atlantic Canada (75.0%) and, apart from BC (which had too few responses to be statistically significant), highest in the Prairies (80.5%). Other rankings of issues were generally aligned with national averages, except respondents from the Prairies who rated restrictions on the size, number and condition of flags second (nationally, this was third) and the need for approval of flag displays by Boards third (nationally, this was second).

### **Potential for Litigation**

Based on the responses of our members, and events arising from similar legislation in the United States (the *Freedom to Display the American Flag Act of 2005*), we see the following potential situations which could result in avoidable litigation:

- A person (either a condominium corporation member, another resident of the corporation, or a person having no relationship with the corporation at all) erects a flag on property of the corporation (which, under the proposed law, can be done without reference to any of the corporation’s constating documents and cannot be debarred). The flag or flag pole is not properly secured and falls. The condominium corporation is responsible at law for any damage or injury this may cause, notwithstanding that the flag and/or flag pole were in contravention of the corporation’s rules and regulations
- A large flag is draped over a balcony in a high-rise condominium building, either without consideration of the consequences or as a result of disaffection of the unit owner displaying the flag. The flag blocks the view of another unit owner, or the noise made by the flag flapping in the wind is problematic for other unit owners. Other affected unit owners or the corporation itself (or both) could then sue for removal of the flag
- A person displays a flag that is tattered, worn or similarly unsuitable to be displayed as our nation’s standard. Neither the proposed Act nor existing protocols deal with this eventuality. A unit owner, having a dispute with the owner displaying the flag, could sue this second owner for being in contravention of subsection 2(a) of the Act. However, since neither the Act nor flag etiquette deal with the situation, adjudication of such a suit becomes subjective
- Similarly to the above, a unit owner can use a flag in place of window drapery. In addition to this being against the rules and regulations of many condominiums (which often regulate drapes and curtains), this is arguably an inappropriate use of the flag. Once again, however, this type of use is not explicitly debarred by either current flag etiquette (which only states that the flag “should not be used as a table/seat cover, as a masking for boxes or as a barrier on a dais or platform”) or the proposed Act (the meaning of subsection 2(a) may or may not cover such use). Adjudication of a dispute before the courts again becomes subjective
- A unit owner may display a large number of oversized flags, detracting from the appearance of the condominium’s buildings. Such displays may make it difficult for another owner to sell his/her unit, or may reduce the price s/he is able to realize on sale. The seller could then sue the person displaying the flags for the difference between the price s/he feels s/he could have gotten and the actual amount received

We believe that one of the features of well-drafted legislation is that it closes, insofar as possible, the door on frivolous litigation which only wastes taxpayer dollars. To this end, we believe the final version of the Act should address these concerns without resorting to vague wording as has been done in the American Act (this only provides that a “reasonable restriction” may be established “pertaining to the time, place or manner of displaying the flag” without giving guidance to either corporations or the courts on what those rules might be).

## **Recommendations**

We respectfully submit that the Bill be amended by including the following “new” section 2 and renumbering ensuing sections accordingly:

2(1). Nothing in this Act shall preclude a condominium corporation, strata corporation, co-propriété divisée, cooperative housing association, or other home ownership association in which the owners share the ownership of common property from establishing reasonable rules to govern:

- (a) the size of flag poles and flags;
- (b) the location of the flag pole or flag display;
- (c) the time and dates of the year the flag may be displayed; and
- (d) the manner in which the flag pole is affixed or the flag is displayed.

2(2). Nothing in this Act shall be interpreted as condoning the display of a flag:

- (a) on property without the explicit permission of the owner or owners thereof;
- (b) as a substitute for any other item such as drapery, chair or table coverings, coverings for statuary, or as a barrier on a dais or platform; and
- (c) in a worn, tattered or otherwise unsuitable condition.

2(3). Subject to section 3, and notwithstanding subsections 2(1) and 2(2), any person residing in a condominium corporation, strata corporation, co-propriété divisée, cooperative housing association, or other home ownership association in which the owners share the ownership of common property may display a portable, small flag no larger than 13 cm by 25 cm on or in his or her car or inside a window of his or her residence.

## **Conclusion**

We appreciate the Committee’s attention and hope that we have made a usable contribution to its deliberations on Bill C-288. We would be pleased to appear before the Committee at such time as it begins consideration of this Bill.

## **Contact Information**

Please contact the CCI National office at the coordinates given below for further information:

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