



## How to remove the Administrator of a Condominium

By Rod Escayola January 30, 2012

In part one and part two of this blog topic, we discussed the circumstances in which a court will appoint an administrator to take over the management of a dysfunctional condominium corporation. This post will deal with how and when a court will end an administrator's term and return the corporation to self-management.

Although section 131 of the Condominium Act does not contain an express provision addressing the termination of an administration, the courts have established that the test to remove an administrator is the same test as for the appointment of an administrator.

Good reason must be shown why unit owners should not manage their corporation's affairs through an elected board of directors



When a court is considering either the appointment or termination of an administrator, good reason must be shown why unit owners should not manage their corporation's affairs through an elected board of directors. The onus lies upon the individuals wishing to maintain the administrator to establish that this test is not met and that the administrator's appointment should continue.

### What is the test to remove an administrator?

Upon an application to remove an administrator, the court will ask whether "it would be just or convenient, having regard to the scheme and intent of the Condominium Act and the best interests of the owners, to terminate the administrator". As such, a court will consider the following:

- Is there now a reasonable prospect for the **orderly self-governance of the corporation**?
- Has the elected board of directors formulated an operating and project expenditure plan that presents a reasonable prospect of achieving the **orderly management of the affairs of the corporation**?

The court adopted this test in Bahadoor v. York Condominium Corp. No. 82, where the administrator's appointment was temporary and subject to termination in the appropriate circumstances. Additionally, no long term project had been given to the administrator.

In this case, as a result of various issues between the administrator and many unit owners, the owners applied to court to have the administrator removed. The Court directed that a meeting of unit owners



be held to decide whether the administrator should continue. During this meeting, 5 new directors were elected, as the majority of the unit owners voted in favour of termination of the administrator.

It is not necessarily sufficient for owners to simply hold a vote on whether the administrator should be removed.

In this case, the election of the new board was approved by the court for the following reasons:

- The unit owners strongly supported the new board members they elected. The owners had voted 215 to 4 in favour of terminating the administrator;
- The elections were scrutinized, detailed minutes were kept of the meeting and there were no objections about the fairness of the election process; and
- The new board retained the services of an experienced condominium consultant and filed a document to the court mapping out the key areas they would address.

The Court suspended the appointment of the administrator and the newly elected board was ordered to assume power on an interim basis. The new board was also ordered to submit materials “demonstrating that they had developed realistic and achievable financial and operational plans for the Corporation”.

## Other factors to consider

It should be noted that the courts have refused to remove an administrator where the terms of the administrator’s appointment have not been completed (eg: completion of renovations). Also, while a vote for a return to self-governance by a new a board of directors is a necessary step in the termination of an administration, the “interests of the unit owners are not the only interests at stake”. The Court will also take into account the impact that the discharge of the administrator might have on other interested persons, such as the corporation’s creditors and the relevant municipal agencies (eg: fire department, building inspection authorities).

Prior to returning the condominium to self-governance, the court will be very careful and will seek reassurance that there is a “reasonable prospect for the orderly self-governance of the Corporation”.

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