



## Condominium Corporations Should Be Cautious When Liening for Chargebacks

The CCI-T Legislative Committee would like to bring to members' attention a recent court decision [Amlani v. York Condominium Corp. No. 473](#). The *Amlani* case will be of significant interest to condominium corporations and condominium managers who rely on indemnification clauses to claim costs of enforcement from unit owners. While this case was decided on its particular facts, below (and on the wording of the particular indemnification clause in that corporation's declaration), it arguably has broader application to other corporations' declarations and indemnification clauses. We suggest that condominium corporations and condominium managers seek legal advice from the corporation's counsel about the impact of this decision on any corporation's particular circumstances.

### Case background:

In this matter, the court considered the question of whether a lien based on a chargeback was valid. The unit owner, Mr. Amlani, smoked in his unit, and the corporation received complaints about the smell of smoke from the occupants of neighbouring units. At the time he purchased his unit, the corporation's governing documents did not prohibit smoking in the units, but did contain a general provision prohibiting the creation of any nuisance that disturbed other residents' enjoyment of their respective units; and later, during his ownership of the unit, the corporation did pass a non-smoking rule but refused to grandfather him. The corporation engaged its lawyers to write to Mr. Amlani to secure his compliance, and in response Mr. Amlani moved out of the unit (though he retained ownership of same) and rented same to a tenant.

Despite Mr. Amlani moving out of the unit (and thereby ceasing smoking in the unit), the corporation persisted with its efforts to obtain his compliance, including sending further notices and scheduling a mediation. The corporation then added its legal costs (approximately \$25,000) to Mr. Amlani's common expenses, relying on the indemnification provision in the corporation's declaration, and registered a lien. After the corporation delivered notice that it intended to sell the unit to enforce the lien, Mr. Amlani brought this application to seek a discharge of the lien.

After reviewing the evidence and the applicable law, the court concluded that the corporation was not entitled to add these amounts to Mr. Amlani's common expenses because these amounts were claimed as the costs of obtaining Mr. Amlani's compliance, and subsection 134(5) of the Act only permits such costs to be added to an owner's common expenses in circumstances where the corporation has obtained an order under that section. To the extent that the indemnification provision in the corporation's declaration provided otherwise, it was inconsistent with the Act and therefore of no effect. As such, the court held that the corporation was not entitled to claim these amounts from Mr. Amlani, and ordered that the lien be discharged. In a subsequent decision, the court awarded Mr. Amlani costs of the application in the amount of \$83,340.00, holding that the corporation had acted unreasonably in pursuing the lien.

The corporation appealed to the Divisional Court. The appeal was heard on June 26, 2020, and we understand that the appeal was dismissed by the Divisional Court that day (though it has not yet released its reasons for decision).