



## Condo Abuse of Power- Board of Directors

By Denise Lash on November 21, 2010



Unit owner disputes between owners or between owners and the board, can often lead to individuals taking inappropriate steps and sometimes carrying out illegal activities which they justify are "for the good of the community" In some instances, board members take matters into their own hands, abusing their power as board members, acting contrary to their corporation's board's code of ethics and the duties imposed on them under the Condominium Act and the by-laws of their Corporation.

Take for example the recent incident involving Detective Wayne Lakey and Jeff Green. Wayne Lakey, a member of the board of directors of the condominium corporation, was accused of improperly conducting background searches on Jeff Green. Both men lived in the same condo complex. Green was a previous board member of the condominium corporation The Toronto Star reported that evidence was presented in the tribunal that unofficial police computer searches had been conducted on Green by Lakey.

Why these searches were done is not clear. What we know is that Mr. Green was involved in a dispute with the board of directors in 2005. Was this search done to assist the board in its dispute with Green? What actions should be taken by a board when issues arise between owners? Further details of this issue were reported by [cnews at canoe.ca](#)

At a recent Annual General Meeting at a condominium in Mississauga which I attended, the board of directors presented new by-laws which included changing provisions in the existing by-laws to place new qualifications on being a board member and also included provisions dealing with when board members would be disqualified. One qualification was that no board member shall have been convicted under the Criminal Code. One owner suggested that there should also be mandatory credit checks for each director because the directors are entrusted to handle over two million dollars in reserve funds and operating expenses. The credit check suggestion did not go anywhere but the by-law as presented was confirmed by the owners. The confirmed by-law also included a code of ethics to be followed by board members.



## Condo Reporter

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The Condominium Act itself has minimum qualifications for directors, one being that a director cannot be an undischarged bankrupt. It is interesting to note that in my experience, I have never heard of any board members, unit owners or property managers taking steps to do bankruptcy searches against directors to see if they meet this qualification.

The Standard of Care to be exercised by a director is to exercise their powers and discharge their duties by acting honestly and in good faith and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

It has become standard practice for board members to sign a code of ethics once they are elected to the board. This code will set out what conduct is inappropriate and will often set out minimum standards that directors must follow. Any breach of the code of ethics by a director should not be ignored and should be taken seriously. Failure to take steps could expose the condominium corporation and its board members to potential liability.

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