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### CONDOMINIUM LAW AND ADMINISTRATION

Audrey M. Loeb  
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Condominium Law and Administration is an invaluable resource for those involved in conveyancing, development, condominium management or the representation of condominium corporations, whether inside or outside of Ontario.

This release features updates to Chapters 6, 10 and 17.

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## Highlights

- **CONDOMINIUM RESALE—THE AGREEMENT OF PURCHASE AND SALE**—In *Sharma v. Provident Holdings Limited*, 2023 CarswellNS 872 (N.S. S.C.), the purchaser of a unit had moved some new appliances into the newly constructed building just after the original date set for closing and pending the actual closing date. On the day prior to the revised date for closing, the purchaser, her real estate agent and a representative of the vendor conducted the pre-closing inspection. Later that same day, the vendor’s legal counsel advised that the vendor was terminating the purchase agreement on several grounds, including that the purchaser twice entered the property while it was still under construction. The purchaser sued the vendor for breach of contract, seeking specific performance or, alternatively, damages. The court allowed the action, specifically rejecting the vendor’s allegation that the purchasers pre-construction entry onto the property permitted termination of the purchasing agreement. The construction of the building was complete as of the original closing date which date preceded the purported unlaw entries. The vendor had permitted the purchaser, at her own risk, to store her new appliances in the unit for her intended move-in date and that the appliances had remained on the premises for a few months pending the revised move-in date. The purchaser’s explanation about why she had entered the unit the month following the move-in of her new appliances was both justifiable and reasonable: “[D]etermining whether a breach of contract justifies the innocent party terminating the contract rather than confining his remedy to the damages caused by the breach ... the breach must be tantamount to the frustration of the contract.” The conduct in this case was not sufficiently fundamental.
- **CONDOMINIUM RESALE—THE AGREEMENT OF PURCHASE AND SALE—SPECIFIC PERFORMANCE**—In *Sharma v. Provident Holdings Limited*, 2023 CarswellNS 872 (N.S. S.C.), the court granted the plaintiff purchaser’s claim for specific performance of a purchaser agreement, referencing the generally applicable principles for the exceptional, equitable remedy of specific performance. The court held that the purchaser had a “fair, real and substantial justification” for her claim to specific performance. The purchaser’s evidence on this issue was both compelling and credible: the purchaser was looking to eventually downsize and wanted a home that was in the same area as, and within a short walk of, her existing home where her son would live when she moved out; accessible and all on one floor; included maintenance of the exterior elements; and provided the opportunity to be involved in several of the unit’s design specifications. The unit that the purchaser was to buy was a new build with a southern exposure, would have a heat pump as the main source of energy and the hot water unit moved into the unit, and was nestled between two other units which location the purchaser preferred for expected energy cost savings. Rejecting the vendor’s contention that the purchaser had an obligation to mitigate her damages by purchasing an alternate property, the court noted that the vendor’s representative had acknowledged that when the Agreement was terminated, there were no other “substitute” properties avail-

able and had emphatically testified that the vendor would never sell the purchaser a unit in the same development.