



# THE LAWRENCES<sup>®</sup> LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

FALL 2011

## Condo Conversion: Not Just for Apartments

### Heather Picken

Ten years ago, Paul purchased a Brampton strip plaza of 30 small commercial stores. At first, the plaza vacancy rate was low, but increasingly he has had to deal with defaulting tenants and maintenance issues. Paul would like to retire and has considered selling the plaza, but his real estate agent says it will be difficult to find a buyer in these economic times.

Paul could consider converting his plaza to a commercial condominium and selling units individually, perhaps even retaining some of the units for lease. Paul finds this flexibility attractive but wonders how he would go about converting to condominium ownership.

While a commercial condominium conversion has fewer restrictions than a residential conversion, it is still a development process and must comply with such legislation as the Condominium Act, the Planning Act, the Ontario Building Code and the applicable Official Plan and Zoning Bylaws of the Municipality.

### Rights of Tenants

Tenants have the right of first refusal to purchase the units, and if they do not want to buy, any new buyer must honour the provisions of the tenant's lease. Paul's lawyer should carefully review the leases to ensure that Paul's conversion plans would not breach any of his tenants' rights.

### Structural Requirements

The Municipality will likely require a qualified engineer or architect's report on the structural and mechanical integrity of the buildings in the plaza, together with a list of any deficiencies that would have to be rectified to bring the building into compliance with current Building Code and governing zoning bylaws. The cost of any necessary remediation must be weighed against the potential benefit of being able to sell or lease the units individually.

It must be physically possible for each unit to exist as a self-contained, independent unit, so Paul will have to retain an architect and surveyor to define the



boundaries of each store in the plaza as a separate unit, including the treatment of windows, doors and ceilings. This can be a challenge, depending upon how the services have been installed in the building.

A standard unit will also have to be defined, so that the obligations of both unit owners and the Condominium Corporation for repair and replacement can be determined. This can also be a challenge, depending upon whether the tenant or the landlord paid for the leasehold improvements.

Common element areas must also be defined. These can include the parking areas and driveways, any landscaped areas, lobbies, elevators, public washrooms, garbage disposal areas and any mechanical or electrical rooms. Maintenance of common areas is usually the responsibility of the Condominium Corporation.

### Disclosure

Before any binding Agreement of purchase and sale can take effect, Paul must work with his lawyer and surveyor to prepare a disclosure package for potential purchasers and existing tenants. It must contain detailed information, including a proposed declaration, description, bylaws, rules and budget. Paul must guarantee the budget and common expenses for one year after registration of the condominium. The disclosure must also contain

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# Is Your Place of Business Accessible

## Louis Vouloukos

Joan and Preeti are the franchisors of a small chain of fast-food restaurants. Each restaurant is owned and operated by a different franchisee. Each franchisee has up to ten employees. Three of the five franchised restaurants are in neighbourhoods where there are long-term care facilities and retirement homes, so each restaurant has a percentage of customers who suffer from a disability. One of their franchisees has just called to ask about a reminder they've received from the Ontario government about complying with new accessibility standards by January 1, 2012. She wants to know when the franchisor (Joan and Preeti) is going to take care of the new requirements.

Ensuring accessibility for Ontarians with disabilities is the law—even for small businesses.

The *Accessibility for Ontarians with Disabilities Act, 2005* (AODA) sets out the province-wide accessibility standards in five key areas of daily living: customer service, employment, information and communications, transportation, and the built environment. The Accessibility Standards for Customer Service (“Customer Service Standards”) is the first of these standards to become law. Public sector employers were required to comply by 2010 and now it is the turn of the private sector. All organizations in Ontario that provide goods or services to the public or other third parties, and have at least one employee, must comply with the regulation by **January 1, 2012**.

As the franchisor, Joan and Preeti could set some uniform standards for compliance with the new legislation that would be applicable to all of their franchisees. However, they have opted to put the onus on each of their franchisees to comply with the Customer Service Standards, so it is up to each franchisee to decide what they will do to comply with the new regulations.

Each business with at least one employee must comply with a number of requirements including, but not limited to, the following:

### How to Comply

Each business with at least one employee must comply with a number of requirements including, but not limited to, the following:

- establish policies, practices and procedures on providing goods or services to people with disabilities, including having a policy about



measures the organization offers to people with disabilities to access the goods and use the services. For example, a restaurant with steps at the entrance might provide directions to a side door that would be more accessible to people using wheelchairs or walkers.

- Train staff, volunteers, contractors and any other people who interact with the public or third parties on the organization's behalf.
- Communicate with disabled customers in a manner that takes their disabilities into account. In this example, a restaurant might provide a large-print version of a menu or have the server read the menu to the customer.
- Allow people who use service animals such as guide dogs to bring the animals into premises that are open to the public.
- Provide notice if facilities or services for disabled customers will be temporarily disrupted.

All organizations in Ontario that provide goods or services to the public or other third parties, and have at least one employee, must comply with the regulation by January 1, 2012.

# to People with Disabilities?

- Establish a process for receiving feedback on how the business will provide goods or services to people with disabilities and how it will respond to any feedback.

If your organization has 20 or more employees or is in the public sector, you must also:

- document in writing all your policies, practices and procedures for providing accessible customer service and meeting other requirements set out in the Customer Service Standards.
- notify customers that documents required under the Customer Service Standards are available upon request.
- provide required documents in a format that takes into account the person's disability.
- file annual accessibility reports with the government.

Private sector businesses, non-for-profit organizations, and organizations with fewer than 20 employees are not required to file annual accessibility reports.

## The Risks of Non-Compliance

Fines for non-compliance can be substantial. Every person convicted of an offence under the Act is liable to a fine of up to \$50,000 for each day on which the offence occurs, or if that person is a corporation, to a fine up to \$100,000 for each day on which the offence occurs.

Also, every director and officer of a corporation has a duty to take all reasonable care to prevent the

corporation from committing an offence under the Act. Every director or officer who fails to carry out this duty is liable to a fine of up to \$50,000 per day.

## Take Action Now!

To ensure that your organization can comply with the new regulation, you should immediately:

- establish policies, practices and procedures on providing goods or services to people with disabilities.
- document your policies, practices and procedures in writing (we recommend this for all organizations, not just those with 20 employees or more).
- train your employees and others who interact with the public and other organizations.

Additional information, including examples of acceptable practices that organizations can choose to adopt, can be found on the website of the Ministry of Community and Social Services: <http://www.mcsc.gov.on.ca/en/mcss/programs/accessibility/index.aspx>. If your organization needs advice on establishing and documenting policies, Lawrences has several lawyers who would be able to advise you.



*Louis Vouloukos is an associate in Lawrences' Business Law Group. He also practises franchise law, providing all necessary legal services to franchisors and franchisees. Louis can be reached at (905) 452-6883 or [lvouloukos@lawrences.com](mailto:lvouloukos@lawrences.com).*

Every director and officer of a corporation has a duty to take all reasonable care to prevent the corporation from committing an offence under the Act.

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details of any additional reports to be submitted to the municipality, as well as any applicable conditions such as an initial reserve fund study, performance audit, tenant survey, or building inspection report.

Besides considering his upfront costs, Paul must take into account that he will lose control of the buildings after selling the majority of the units, since he will have only one vote per unit that he retains, just like the other owners.

## Is It Worthwhile?

If Paul tries to sell the whole plaza to one owner, he

is at the mercy of the market at the time he sells. If he converts the property to a condominium, he has the flexibility of selling individual units at prices the market will bear and he can still retain some units to lease if he chooses. The pros and cons must be carefully considered after seeking expert legal advice.



*Heather Picken heads Lawrences' Real Estate Group. She has extensive experience in condominium conversion, especially commercial condominium development. Heather can be reached at (905) 452-6891 or [hpicken@lawrences.com](mailto:hpicken@lawrences.com).*

## Life at Lawrences®

*Lawrences®' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.*

### Lawrences Lawyer Acts for Ontario Bar Association



The Ontario Bar Association recently called on the services of Lawrences litigator **Robert J. van Kessel** to represent the association as intervenor before the Ontario Court

of Appeal. The OBA was invited to assist the Court in interpreting a new rule concerning summary judgments. As author of the books *Summary Judgments & Dispositions Before Trial* and *Dispositions Without Trial*, Rob (at left in picture) was invited to join OBA President Paul Sweeny and David Sterns, chair of the OBA Civil Litigation Law Section, in forming what the OBA website called "our impressive legal team". Congratulations, Rob; it's a high honour to be asked to represent our professional association.

### New Faces at the Firm

Over the past year, Lawrences has welcomed new lawyers to most of its practice groups:

**Louis Vouloukos** joined Lawrences' Business Law Group from a large national law firm. He practices primarily corporate/commercial law, with an emphasis on all aspects of private company law. In addition, Louis advises both franchisors and franchisees on all aspects of franchising. He feels that making the move to Brampton and Lawrences has enabled him to offer more personalized service to clients. Louis can be reached at (905) 452-6883 or [lvouloukos@lawrences.com](mailto:lvouloukos@lawrences.com).

**Philip Graham** recently returned to Lawrences, where he articulated, after practising at a downtown Toronto litigation boutique and obtaining his LLM in Employment & Labour Law. Philip is part of Lawrences' Litigation Group, focusing on corporate/commercial litigation and all aspects of employment and labour law. One of his attractions to Lawrences was the firm's commitment to the community. Philip can be reached at (905) 452-6876 or [pgraham@lawrences.com](mailto:pgraham@lawrences.com).

And congratulations to our articling students **Kiran Gill** and **Maja Mitrovic**, on their recent call to the Ontario bar. Lawrences welcomes the new lawyers back to the firm as associates.

Kiran is a part of the Lawrences' Litigation Group. She

was attracted to litigation as it involves the objective analysis of legal issues in light of the existing law. Kiran enjoys advocating clients' interests in a strategic manner to get optimal results. She chose Lawrences because of the firm's reputation. "I am really looking forward to building a strong relationship with our clients." Kiran can be reached at (905) 452-6890 or [kgill@lawrences.com](mailto:kgill@lawrences.com).

Maja is enjoying a cross-appointment to Lawrences' Business Law and Real Estate Groups. "It's a great opportunity to practise in both areas of law," says Maja, who chose Lawrences because she felt the firm offered more hands-on experience to its new lawyers. Maja can be reached at (905) 452-6892 or [mmitrovic@lawrences.com](mailto:mmitrovic@lawrences.com).



### THE LAWRENCES® LETTER

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New Faces at  
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