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BY EMAIL healthsante@ottawa.ca

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Re: Condo pools and gyms – Reopening Ontario

Dear Dr. Vera Etches

We are writing on behalf of the Condo Directors Group, seeking clarification and guidance on Ottawa Public Health's position on the regulations applicable to condominium pools and gyms. This query is time sensitive as we are at the very outset of Step 1. While we appreciate and respect the other competing priorities you are currently facing, we sincerely hope to receive an answer in short order to guide condominiums over the upcoming months.

The Condo Directors Group (the "CDG") is an association of condo directors representing some 150 condominium corporations in Ottawa, comprised of nearly 25,000 condo units. You can read more about the CDG's work by visiting its website at <https://condodirectorsgroup.com/>.

Ottawa's Health and By-law's position on pools/gyms

The CDG's membership is receiving conflict information from Ottawa Public Health ("Public Health") and from Ottawa's By-law & Regulatory Services ("By-law") with respect to the regulations applicable to their condo pools and gyms in the context of the province's 3-step roadmap to reopening Ontario. Specifically, both Public Health and By-Law appear to be advising condo owners that it is permissible for their condo corporation to operate their pools and fitness rooms, both indoors and outdoors. This is causing difficulties and challenges for these condo corporations whose statutory objects are to control, manage and administer their common elements on behalf of their owners.

When pressed for some clarification, Blayr Kelly (supervisor / Public Health Inspection) provided as the sole authority and rationale for condo pools to open a reference to section 25 of Schedule 2 of O.Reg. 82/20, which list the following as businesses authorized to operate:

25. Hotels, motels, lodges, cabins, cottages, resorts and other shared rental accommodation, including student residences, that meet the following condition:

1. Any indoor pools, communal steam rooms, saunas or whirlpools, indoor fitness centres, or other indoor recreational facilities that are part of the operation of these businesses, are closed.

In an email of June 10, 2021, Ms. Keely opines that since the above section does not list condominiums, condo corporations can open their pools.

A similar position was taken by By-law, in an email of June 11, 2021, which advised a condo owner that “gyms, exercise rooms and pools located in condominiums... are permitted to remain open”

Respectfully, the above quoted section has no application in the present case for two main reasons:

1. Schedule 2 of O.Reg 82/20 (or now Schedule 7 under Step 1) deals with “businesses that may open at step 1”. While condos are considered corporations, the Reopening Ontario Act regulations applicable to businesses do not apply to them as they do not operate for profit;
2. Most importantly, section 25 does not regulate pools but rather regulates the operations of Hotels, motels, lodges, cabins, cottages, resorts and other shared rental accommodation. This section is limited to permitting these institutions to open under certain conditions.

Regulations under the Reopening Ontario Act

Regulation 82/20 adopted under the *Reopening Ontario Act* imposes strict regulations on businesses and organizations in Ontario during Step 1 of the recently adopted 3-step roadmap to reopening Ontario.

Section 1 of Schedule 6 of this Regulation provides that each person responsible for a business, organization or a place that is required to be closed shall ensure that is closed or that it operates under the conditions listed in the applicable schedule.

The regulation is then divided in numerous schedules, each with its own application. The relevant schedules applicable under Step 1 are Schedules 6 to 10. Of these:

- Schedule 7 regulate “Businesses that may open at step1”; and
- Schedule 8 regulates “Places that must close or that are subject to conditions at step 1”.

In our view, condominium corporations fall under the ambit of the schedule regulating “places” but, regardless of whether they are defined as “places” or “businesses”, both schedules provide that indoor pools and fitness rooms are to be closed under Step 1.

Specifically, section 4 of Schedule 8 (applicable to “places”) provides that:

Recreational amenities

4. (1) Each person responsible for an indoor or outdoor recreational amenity that is not in compliance with this section, and that is not a facility for indoor or outdoor sports and recreational fitness activities that is permitted to open under section 45 of Schedule 7, must ensure that it is closed.

(2) The following outdoor recreational amenities may open if they are in compliance with subsection (3):

The regulations goes on to list those indoor or outdoor recreational amenities that can open, which include the following relevant ones:

1. Parks and recreational areas.
15. Playgrounds.
16. Portions of parks or recreational areas containing outdoor fitness equipment.
21. Outdoor pools, splash pads, spray pads, whirlpools, wading pools and water slides.

What is clear from this section is that any other recreational amenity must be closed. Stated otherwise, under this regulation, “places” in Ontario under Step 1 cannot open their indoor fitness rooms or indoor pools (amongst others).

Section 4 quoted above also permits “indoor or outdoor sports and recreational fitness activities that is permitted to open under section 45 of Schedule 7”. This Schedule, meant to normally apply to businesses, applies to “places” by reference. Section 45 provides that “indoor or outdoor sports and recreational fitness activities” are only authorized under Step 1 if they meet the conditions set out in subsection (2), (3), (4) or (7):

- **Subsection 2** deals with high performance and professional athletes;
- **Subsection 3** deals with day camp, and facilities providing mental health support or social services; and,
- **Subsection 4** allows (but does not mandate) some facilities to open to service individuals with disabilities if they are in receipt of instructions for physical therapy from a regulated health professional in certain circumstances;

Subsection 7, the only relevant one, authorizes some “outdoor sports and recreational fitness activities” provided that the activities are limited to “outdoor fitness classes, personal training and training for team and individuals sports”, with no more than 10 participants at any given time, provided that a 3-metre distance can be maintain and that the facility actively screens and records the information of all participants.

What is clear from the above is that, regardless of whether condo corporations fall within the definition of “businesses” or “places”, they cannot open or operate interior fitness rooms or pools (and other interior water amenities). Under Step 1, only recreational areas containing outdoor fitness equipment or exterior pools (and other water amenities) can be operated.

The above opinion is in line with the advice provided by condominium lawyers across the province, in addition to being in line with the position taken by the Condominium Authority of Ontario.

For Public Health or By-law to advise condo dwellers that condo can operate indoor amenities is contrary to the applicable regulation and is, in our respectful view, irresponsible considering the extremely precarious position in which the province (and the rest of the country) finds itself. It is also, in our view, nonsensical to suggest that, while the rest of all of the professionally operated sports and fitness facilities are under extreme lock down and strict restrictions, community-operated condominiums can, somehow, allow their dwellers to use their indoor gyms and pools without any of the stringent regulations applicable elsewhere. One must keep in mind that, while condo corporations are residential in nature, they are semi-public facilities, some of them reuniting well in excess of 250 families.

It is simply inconsistent with the current direction taken by the province to allow these facilities to open while keeping all of the other indoor recreational facilities closed. It would appear to make far more sense to keep these facilities closed to be consistent with provincial restrictions.

Even if Ontario’s 3-Step roadmap allowed condo pools and fitness rooms to open – which, respectfully, it does not – Public Health should not push onto condo boards the ultimate decision to open or not without any clear guidance. Condo boards are comprised of volunteers. As well intentioned as they are, they simply do not have the competency in health matters or the resources to monitor and analyse provincial/local vaccination rates and key public health and health care indicators to take these kinds of decisions. Condo boards rely on Public Health’s directions and recommendations regarding the pandemic and the steps to safely reopen Ontario.

We very much look forward to a timely response to this communication as condo corporations are currently under a lot of pressure and are without clear guidance from Public Health.

Please forward your answer to the undersigned.

Yours truly,



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