FYI

A relevant case, given the history of leak issues in our Condo.

Eileen

[https://dhacondolaw.ca/condo-law-news/some-clarity-or-not-re-acts-or-omissions/](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fdhacondolaw.ca%2Fcondo-law-news%2Fsome-clarity-or-not-re-acts-or-omissions%2F&data=04%7C01%7C%7C7947975f70074492f45b08d8bbc8af9d%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C637465817894240934%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=Tc8dXy0xItxw8Q6hnP1x%2BCPivcUI79IMdGTWhwrHuYc%3D&reserved=0)

# Some Clarity (or Not) Re “Acts or Omissions”

As many of our readers will know, an owner may in some cases be responsible for insured damage falling with the deductible on the condominium corporation’s insurance policy. For example, Section 105 (2) of the Condominium Act, 1998, renders an owner responsible for deductible damage (to the owner’s own standard unit) caused by an “act or omission” of the owner or of an occupant of the unit. Also, many condominium by-laws render an owner responsible for deductible damage (to the common elements or any standard units) caused by an “act or omission” of the owner or of an occupant of the unit (or their agents or invitees as well).

But what is an “act or omission”?

The case of [***Lozano v. TSCC 1765***](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.canlii.org%2Fen%2Fon%2Fonsc%2Fdoc%2F2020%2F2020onsc4583%2F2020onsc4583.html%3FresultIndex%3D1&data=04%7C01%7C%7C7947975f70074492f45b08d8bbc8af9d%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C637465817894240934%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=2UjWTaHBk2th7Jl8sWmUvbhiDFKN7JLLNoJkyWzynNs%3D&reserved=0) may (or perhaps may not) help us better understand the meaning of the phrase “act or omission” when dealing with insured damage.

In the **Lozano** case, damage was caused to the building when the owners’ toilet overflowed. The owners were out of the country at the time. The condominium corporation’s by-laws included a provision holding the owners responsible for the deductible on the corporation’s insurance policy in cases of damage resulting from the owners’ “acts or omissions”.

The Court held that the damage in question resulted from the owners’ “act or omission”, even though the owners were not necessarily negligent. The Court said:

This is not a case where the unit owners were negligent in their care and upkeep of the Unit. Rather, this is a case where the failure to retain a plumber who could make thorough repairs constitutes an omission for which the Lozanos must be held responsible. Further, while the Lozanos were conscientious in arranging family and friends to check on the Unit during their prolonged absence, it would have been additionally prudent to have shut off the water to the Unit during their trip. Doing so would presumably have mitigated against any damage of the kind suffered here and is reflective of the level of care and diligence that is expected of condominium owners.

The difficultly I have with this case is as follows: Even though the Court says that the Lozanos weren’t negligent, the Court also says that they “failed” to retain a plumber to make thorough repairs, and also that their failure to shut off the water (while away) was not reflective of the level of care expected of condominium owners.

That sounds like negligence to me.

So in summary: This case tells us that the phrase “act or omission” can include conduct (or lack of conduct) that does not amount to negligence. But I’m still not sure of the distinction. It still appears to me that an “act or omission” needs proof of something that “should have been done differently”… which sounds an awful lot like negligence.

Stay tuned to [Cond](https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fdavidsoncondolaw.ca%2Fblog%2F&data=04%7C01%7C%7C7947975f70074492f45b08d8bbc8af9d%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C637465817894250921%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=130DmAar7hAg%2B%2FzW0J8WaL6gq9ZNAV4QUD7NhhEe9Fg%3D&reserved=0)[o Law New](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fdhacondolaw.ca%2Fcondo-law-news%2F&data=04%7C01%7C%7C7947975f70074492f45b08d8bbc8af9d%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C637465817894250921%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=eKjqpwo%2FhgRzSiGiuSlz%2BO3bwkbRjSuYrguq0lWJ8UI%3D&reserved=0)[s](https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fdavidsoncondolaw.ca%2Fblog%2F&data=04%7C01%7C%7C7947975f70074492f45b08d8bbc8af9d%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C637465817894260916%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=zZdYMf3K%2F%2FXA1ZRk0SZV3UFxkB48eXIKIPswbw2d%2FME%3D&reserved=0) to keep up to date on the latest developments on condominium law!