

# Water Safety & Spring Cleaning

By Ashley Winberg



Residing at a condominium that is situated on a lake or has an outdoor pool is a huge perk in the spring and summer months, however, this perk comes with a significant amount of risk exposure for the condominium corporation.

Pursuant to Sections 26 and 117 of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the “Act”), a condominium corporation that has a body of water on its common elements must ensure that the presence and use of the body of water does not result in an increased risk of injury since the condominium corporation is deemed to be the “occupier” of its common elements for liability purposes.

A condominium corporation’s duty as the occupier of its common elements is set out in Section 3 of the *Occupier’s Liability Act, 1990*, R.S.O. 1990, c. O-2 (the “OLA”) and the same imposes an affirmative duty on a condominium corporation to ensure that its common elements are reasonably safe by taking reasonable care to protect persons while on the common elements from foreseeable injury. The obvious foreseeable injury associated with any body of water is drowning, however, it is also foreseeable that a body of water and/or the area surrounding it could cause other water-related injuries, such as spinal cord injuries, concussions, traumatic brain injuries and fractures. For example, diving in shallow water could cause a person to hit their head on the bottom of the body of water, which could result in spinal injury. At the same time, running and slipping on a pool deck could result in drowning as well as a concussion.

Accordingly, the “spring clean up” at a condominium corporation that a body of water on its common elements should include a review of the safeguards in place to protect persons on the premises from the foreseeable risks associated with the body of water and the surrounding area. At a minimum, the condominium corporation should ensure that:

1. visible “No Diving” signs are posted in the vicinity of any shallow areas;
2. “No Running” signs are posted around the pool deck and/or dock; and
3. if the body of water is an outdoor pool that is not supervised by lifeguards, the appropriate notice regarding the same is displayed within the pool enclosure area.

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