

value to busy practitioners. Thus, under Section 6 of this Act, the author of this edition has paragraphs dealing with Mohammedan law on the same point as is covered by this section of the statute, cases decided according to Mohammedan law, Hindu law and relevant cases, the sub-divisions of Hindu communities and customs such as those governing one undivided Mitakshara family, etc. Under Section 7 he includes paragraphs dealing with guardians of a Mohammedan Mutwali, and the ambit of the section, the interpretation of different words and clauses in this section in various cases, matters of procedure and jurisdiction, etc.

The same high standard of thoroughness and accuracy is maintained throughout the book, and the vast number of cases cited under each section makes this a most valuable work which is sure to be sold out even more rapidly than did the 9th and 10th editions. The usefulness of this book is further enhanced by the inclusion of the High Court Rules of all the different states in India, Maharashtra, Madras, Mysore, etc., and both old and new or revised rules have been included so that the busy lawyer can see at a glance the changes in procedure and practice as at present prevailing.

The value of the book is further enhanced by the inclusion of The Indian Majority Act and the Hindu Minority and Guardianship Act, both with commentaries and by the inclusion of Specimen Forms for practitioners in the appendix.

Mr. Shambhudar Mitra deserves the congratulations of all practicing lawyers in India who at sometime or other during their practice have had to deal with cases under this Act for fulfilling a sorely felt need since the last edition of this book went out of print by the publication of the present edition and for the high standard of thoroughness of research, comprehensive coverage and accuracy which he has maintained throughout the present edition.

MEHER K. MASTER*

CONDOMINIUM IN CANADA

By Alvin B. Rosenberg, Q.C.; (Canada Law Book Toronto), 1969; XXI, 197, 55 (Appendices) and 13 (Index) pp.

Condominium ownership of real property is very new in Canada, and like most new concepts is given a mixed reception. Mr. Rosenberg is in the rare category of those thoroughly familiar with the subject and thus able

* Assistant Professor, Faculty of Law, University of Manitoba.

to present fairly the advantages and disadvantages for a particular development. Those who favour a more widespread use of this form of ownership will take heart from the following comment by the author:

"The condominium concept is an exciting one. It is not a solution to every construction problem, but in certain areas it can make a significant contribution towards housing needs and retail shopping centre requirements, and can be useful too in some office building and industrial complexes. It is also applicable in projects that are combinations of any two or more of residential, retail, office and industrial developments. In most areas, however, the use to date has been largely residential."¹

The form of the book deserves comment, because it is purposely designed to allow for expansion and revision. The Preface, Table of Contents, Table of Cases, and a Glossary of Condominium Terms are bound as one booklet as are each of the fourteen chapters which follow. The appendices are in a separate booklet, and so is the excellent alphabetical index. These small booklets are arranged in a looseleaf binder which has plenty of room for future expansion. It is the expressed intention of Mr. Rosenberg and the publisher to provide supplements, and as the law develops to add new chapters or revised chapters. This is certainly a sound approach to a subject which is so new in Canada that there is no case law on the various statutes. Another good feature is the Summary of Contents for each chapter which describes in a few words the subject matter of each article in that chapter.

It is a difficult book to review because of the informative nature of the content, which is to some extent a summary of the information on condominium collected by the author from many sources. He has processed this information and set it out in clear, concise language. The introductory chapter alone deals with ten topics in less than seventeen pages. This is not an inference that Mr. Rosenberg does not express his own view as he explains the various technical terms, relates the history of condominium ownership from its beginnings over 2,500 years ago to the present day, points out the pitfalls to be avoided by the practising lawyer, or discusses the advantages and disadvantages of this form of ownership. On the contrary, his own ideas are expressed and thoughts put forward, not expecting that others will necessarily agree with them, but hoping to start a discourse which will result in better laws, or better application of existing laws, to specific condominium projects.

Of particular interest in Manitoba are the comments with respect to Condominium on leasehold land. Mr. Rosenberg points out that "the Act simply provides that "land" means land, whether leasehold or in fee simple, under the provisions of The Real Property Act, and that "owner" means the owner of the freehold estate or estates or leasehold estate or

1. Chapter 14, p. 1.

estates in a unit and common interest.”² In his view this leaves many problems unanswered. His main concern is that it is not clear whether or not the entire lease is in default in the event of a breach of covenant by one of the unit owners, or whether the lease has been fragmented into separate leases with each unit owner without the consent of the landlord. The point is well taken and a solution of the problem should be found. This may not be too difficult. A lease under The Real Property Act is in a special form and provision is made in the Act for the issue of a leasehold certificate of title. Once a certificate of title has issued the leasehold estate is dealt with by transfer of land in the same manner as freehold but subject always to the terms of the lease and to cancellation if the lease is legally terminated. Under Section 10 (5) of the Condominium Act the corporation is responsible for the “control, management and administration of the common elements.” It would appear to be logical to provide in the Declaration that the Corporation would be responsible for carrying out the terms of the lease and that the rent, and any other costs would be part of the common expenses. It would be wise to incorporate a provision in the Condominium Act making the Corporation responsible for the covenants in the lease and providing that default shall be the default of all unit owners. Those interested in condominium legislation in Manitoba are indebted to Mr. Rosenberg for pointing out this weakness.

The practising solicitor who may be already familiar with the basic concept of condominium and with the statute and regulations (if any) of his own Province, will find Chapters 9 to 13 inclusive particularly valuable. In Chapter 9 the problems arising from destruction, obsolescence, expropriation, termination and sales are analyzed. Chapter 10 deals with the thorny and complex problem of insurance. Of particular interest is the treatment of the position of the mortgagee. Mr. Rosenberg says:

“How can the mortgagee’s traditional right to apply insurance proceeds to the mortgage debt, in lieu of repairs, be preserved, without jeopardizing the reconstruction of the complete project?”³

He suggests that one possible solution would be “insurance by the individual unit owner, with loss payable to the unit mortgagee, in addition to the master policy carried by the corporation on the total project. However, even if such insurance is placed, unless some statutory provision is made to negate contribution between insurers, the doctrine of contribution may nullify the effect of the second policy.”⁴

Chapter 11 is entitled “Representing the Developer”, and covers such matters as preliminary advice to the developer on the advantages and disadvantages of registering the property as a condominium, as well as

2. Chapter 5, p. 11.

3. Chapter 10, p. 3.

4. *Ibid.*

drafting and approving the necessary documents for registration under the Act, conveyance of units, and financing if required.

Chapter 12 is a guide to the practitioner when acting for the purchaser or mortgagee. It is readily apparent that the responsibilities of a solicitor and the procedures to be followed to protect his client are very different than they would be if acting for a purchaser or a mortgagee of the fee simple. The checklist provided in Appendix A contains items to be requisitioned which apply only to a condominium. For example:

"A certificate of the corporation with regard to:

- (a) any notices of a meeting to discuss sale of the project;
- (b) any notices of a meeting to discuss termination of the condominium status;
- (c) any outstanding actions pending against the corporation;
- (d) the position concerning common expenses owing or prepaid by the vendor;
- (e) any notices of a meeting, or any intention known to the corporation, with regard to alterations, additions or renovations of the common elements;
- (f) any meetings proposed or notices of intention received from unit owners asking for substantial change in the assets of the corporation;
- (g) the names and addresses of members of the Board of the corporation or its directors;
- (h) any necessary consents to this purchase by the corporation executive."⁵

Miscellaneous problems are discussed in Chapter 13. This includes Municipal Taxation, Income Tax and Common expenses among others.

There are three appendices. Appendix "A" already mentioned contains checklists for a solicitor acting for a developer and for a purchaser or mortgagee. Appendix "B" sets out forms of Declaration and By-Laws in use in Ontario as well as conveyancing forms for that Province. Appendix "C" contains practice notes, one for British Columbia contributed by J. H. R. Robertson of the British Columbia Bar, one for Alberta contributed by J. A. Beckingham of the Alberta Bar, and a third for Ontario contributed by the author.

It is hoped that these sketchy summaries of the content of a portion of the book will enable an interested person to decide about the usefulness of the book for his or her library. It is a very carefully prepared book which must represent long hours of work by Mr. Rosenberg. His style is concise and easily understood. There is no hint of the jargon so common in contemporary writing which appears to be deliberately chosen to confuse rather than enlighten the reader. The treatment of the subject is excellent. It is a book which should become even more useful when the supplementary material promised becomes available.

DONALD M. LAMONT*

5. Chapter 15, p. 3.

* Registrar General of Manitoba, Land Titles Office, Winnipeg.