

Introducing a New Act — Apologize!

By J. Robert Gardiner, BA, LLB

SORRY NO longer seems to be the hardest word. The *Apology Act, 2009* came into force in Ontario in April 2009. Now, you can apologize to a person you have caused harm without fear that the apology would be used against you as evidence of liability in a civil lawsuit. In the past, doctors, hospitals, persons involved in automobile accidents and condo boards were always instructed by their lawyers not to apologize because it would appear to be an admission of guilt that



would lead to financial damages claims payable by them or their insurer. Now the *Apology Act* encourages apologies in a wide range of scenarios, with a few exceptions, by making an apology inadmissible in a civil proceeding as evidence of fault or liability.

We all make mistakes deserving of an apology to friends, family members and strangers who our words or actions may harm. Feeling free to make a justly deserved apology to your victims may help smooth over the occasional rocky road. Now that is made easier by the *Apology Act* with the result that many contentious battles that may have been initiated by an annoying

	<p>Tried Tested & True</p>	<p>We continually build our business and our reputation one satisfied customer at a time. We now proudly serve over 100 condominium communities and 10,000 residences. We professionally manage corporations of all architectural designs, styles and sizes, ranging from 8 to 800 units and in age from newly constructed and recently occupied to those well established.</p> <p>A proven track record of over a quarter of a century, delivering exceptional customer service and quality condominium management to our valued clients. We are well experienced with the intricacies of the Tarion process, the unique demands of new as well as the challenges of older communities.</p> <p>We are not affiliated with any developer or trade. Our sole focus is our client's best interest which we safeguard and protect at all times.</p> <p><i>Experience the difference</i> www.mrcm.ca</p>
<p>75 ROSEDALE AVENUE WEST, UNIT 6, BRAMPTON, ONTARIO L6X 4H4 T 905 454 5813 F 905 454 0025</p>		

event can be headed off at the pass by a sincere apology.

Having the courage to apologize for your mistake is the sign of a person with integrity, goodwill and confidence in his/her own skin. Often, the emotional portion of a plaintiff's attack can be diluted and even eliminated when the plaintiff receives acknowledgement by a wrongdoer that harm has been done to them and that the wrongdoer acknowledges responsibility. An honest and sincere apology may provide an explanation for the cause of the harm, as well as a recognition that the wrongdoer did not get away with "putting one over" on the victim. An apology may also help reduce the wrongdoer's feelings of guilt and

raise his self-esteem and personal integrity. Doing the right thing makes both parties feel that some measure of justice has been rendered. Surprisingly, victims often respond to an apology much more favourably than the wrongdoer ever expected.

If previously lawyers could be justified for protecting their defendant clients by insisting they do not apologize, now the shoe is on the other foot. Already, on several occasions, I have carefully crafted apology letters on behalf of condo boards or managers to angry unit owners that have taken the wind out of their sails. It is certainly a strategy I will be recommending in appropriate cases in future as a very potent means to avoid and

move beyond all of the expensive and prolonged litigation that can result in legal fees far exceeding the monetary value in dispute or the final award of damages.

Any good lawyer woodsheds her clients to become realistic as early as possible in a lawsuit. That does not of course mean that an apology is always the best strategy. Apologies ought to be framed in various ways appropriate to the circumstances. Often it would not be expected that an apology would actually resolve the issues and in fact, in negligence, defamation or other tort lawsuits and contract disputes, proving fault and blame remains the key for a plaintiff to obtain a damages award. Nonetheless, in



Coulter Building Consultants Ltd.

Consulting Engineers & Building Scientists

Your Multi-Unit Residential Engineering Specialists

Building Condition Surveys

Reserve Fund Studies

Performance Audits

Water Penetration Assessment

Building Envelope

Structural Engineering:

Wall Cladding, Windows, Roofing,
Balconies, Parking Garages

- Problem/Condition Assessment
 - Remedial Design
- Tendering & Bid Analysis
- Contract Administration
 - Site Review



Professional Engineers
Ontario



Canadian Condominium Institute
Institut canadien des condominiums



ACMO
ASSOCIATE



ENGINEERING FROM A PRACTICAL PERSPECTIVE

Toll-free
1.877.313.9862

www.cbcengineers.com

cases where an apology is appropriate (especially before commencement of litigation), it can encourage early resolution of the case at a substantial cost saving to both parties, particularly in scenarios where the value of an explanation and apology for wrongdoing may be even more important to the individual than monetary compensation.

Lawyers will still caution their clients not to apologize while testifying in court. Ontario's legislation specifically does not apply to apologies made in a scenario that may result in a criminal trial or a provincial offence proceeding. Also, an apology made while testifying at a civil or administrative proceeding or an arbitration is admissible in that particular proceeding as evidence of fault or liability. Such an apology must be carefully assessed by your lawyers in advance to ensure that it does not amount to acceptance of fault or evidence of liability. Other provinces have different kinds of apology legislation.

The Ontario government, lawyers, the medical profession and

others have recognized that the *Apology Act* can be expected to remove barriers to settlement discussions, healing and reconciliation, while promoting civil relationships among antagonistic parties.

In day-to-day life, don't be afraid to apologize as soon as you have goofed. If litigation appears to be imminent, involve your lawyer in crafting a written response.

Erich Segal (Love Story author) said "Love means never having to say you're sorry." It sounds nice, but in reality, sometimes "sorry" is the kindest word, especially to those who deserve your love. ■

J. Robert Gardiner, BA, LLB, ACCI, FCCI is senior partner in the law firm Gardiner Miller Arnold LLP, practicing condominium law in Toronto. Bob is past president of the Canadian Condominium Institute (Toronto & Area) and author of The Condominium Act, 1998 – A Practical Guide (Canada Law Book (905) 841-6472) and Beyond the Condominium Act (ACMO RCM College Text), amongst other texts.

ACMO 2000 CERTIFIED



Personalized Condominium Management Specialists

Serving:
Peel, Halton, Hamilton
Wentworth Regions
and Districts



ESTABLISHED SINCE 1977

For more information on our comprehensive, cost-effective services, please contact:

Trevor J. Maddern,
RCM, CRP, CMOC, ARP
President

Burlington Office:
5510 Mainway,
Burlington, Ontario L7L 6C4

Toll-free: 1-800-701-4442

Email:
mail@TheActiveOffice.com

Website:
www.TheActiveOffice.com



cci

"Your satisfaction...is our future!"

**CRAWFORD
ROOFING CORP.**

85 Bakersfield St., Toronto, Ontario, M3J 1Z4 Tel: 416-787-0648
Fax: 416-787-0640 Email: service@crawfordroofing.ca

Industrial Commercial Institutional Roofing Solutions

<ul style="list-style-type: none"> - PMI Programs - Metal Roof Systems - Emergency Services - Roof Top Decks 	<ul style="list-style-type: none"> - Modified Bitumen - Waterproofing - Roof Anchors - Sheet Metal 	<ul style="list-style-type: none"> - Built Up Systems - Restoration - Single Ply - Inverted

Committed to Safety, Quality & Service for over 30 years
Services Fully Insured & Licensed

Proud Member of: