

# 1573454 Ontario Ltd.

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March 28<sup>th</sup> 2021

The Board of NSCC72  
Gary Gratton, President  
Peter Silverman, Vice President  
Doug Genno, Secretary/Treasurer  
c/o Unit 406, 323 George Street  
Cobourg, Ontario K9A 3L9

Dear Board Members,

Reference: **NSCC72 – Declaration dated August 19<sup>th</sup> 2011 and legal matters with Declarant 1573454 Ontario Ltd.**

We wrote directly to your law firm Davidson Houle Allen LLP to, amongst other things, demand access to 323 George Street as required by the Declarant which was registered on the 19<sup>th</sup> August, 2011.

In this document, specifically **Article XIII** – Shared Facility Agreement and Easements, there are very specific obligations by your condominium corporation, **none of which have been complied with.**

Please take this letter as your formal written notification that we expect our rights under Article XIII of the Declaration to be complied with immediately.

We have attached the letter to your lawyers, dated March 21<sup>st</sup> 2021, for your guidance and we are expecting keys, etc. provided to us no later than 10 business days from todays date which will give you ample time to have the keys made for all common area doors in the building including the key from the outside door at the top of the staircase the CURENT 2<sup>nd</sup> egress from your fourth floor. If you have changed any of your locks for card passes, we require copies of those and any other similar items which provide access to the common areas.

We refer you specifically to article XIII paragraph 3 (e) , ***wherein the corporation is required “to ensure that no action or steps are undertaken by or on behalf of the corporation or any owner which would in any way prohibit, restrict, limit, hinder and interfere with the Declarant’s access and egress over any portion of the condominium ...”***

We require these specifically to be delivered by Tuesday April 13 2021, 10 business days from now, failing which, we will commence an action in Small Claims Court to direct that, this Article XIII, be complied with. This will cost us very little but you will be obliged to pay any court fees and also costs for your lawyers if you choose to be represented by them.

On another important matter, the west side temporary staircase is a danger ***after six years of use*** and needs to be removed. It was not anticipated to be in that position for this length of time ***and not designed for permanent use***. If intended to be permanent, it would have been required to be fully enclosed and heated, which clearly this staircase is not.

Furthermore, NSCC72 has no actual easement over this land and you have had ample opportunity to erect an ***internal*** staircase on your own property. ***You have declined to do so.*** We will seek a Court Order, if necessary and at your cost, to have this trespass on our land moved as soon as practical.

Please understand that this is a very serious matter which cannot be ignored indefinitely. Please confirm that you are acting expeditiously, as we cannot have a rapidly deteriorating, ***uninsurable staircase that does not meet Ontario building codes***, for this extended use.

We require your advice on your proposals to urgently retro-fit a portion of your existing building to accommodate an internal exit is required forthwith.

Any new internal staircase, must again, refer back to Article XIII paragraph 3 (e) ***wherein the corporation is required “to ensure that no action or steps are undertaken by or on behalf of the corporation or any owner which would in any way prohibit, restrict, limit hinder and interfere with the Declarant’s access and egress over any portion of the condominium ...”***.

The entire relationship with NSCC72 is appalling and your Board’s decision not to comply with any of the Declaration paragraphs of Article XIII is outrageous. In particular, your refusal to enter into a Cost Sharing Agreement (CSA) with the Declarant is incomprehensible as you actually have no choice but to do so.

Furthermore, the Declaration in Article XIII paragraph (3) (b) ***specifically requires the corporation to “enter into and comply with the provisions of any further or supplemental shared facility agreement requested by the Declarant”***.

You have refused to enter into such agreements for the last several years, purposely as you have stated, to block new development and pointedly said that you are holding the Declarant **“over a barrel”** for financial purposes. You have stated in writing that NSCC72 sees no benefit to entering into a new CSA **as there is no advantage to you**. That is false but, even if it was true, you are obligated by the NSCC72 Declaration to **“enter into and comply with the provisions of any further or supplemental shared facility agreement requested by the Declarant”**. Unfortunately, gentleman of the Board, you have no choice but to comply.

We require, within 10 days, your proposals for a supplemental CSA and, as we read Article XIII paragraph (3) (b), you have to comply with any further or Supplement Shared Agreement requested by the Declarant **regardless or not whether it is negotiated between us**.

In other words, **if there is no co-operation by you, we will draw up a new Cost Sharing Agreement and impose it on NSCC72 as is our right**.

We will take this, and all other issues under Article XIII to Court, if necessary, and your appalling behaviour in refusing to act in Good Faith will, no doubt, weigh in our favour.

We believe that Mr. Gratton is heavily biased to the Declarant stemming back to our attempts to stop him occupying, in 2015, his not yet owned, personal unit 406 **without an Occupancy permit approved by the Town of Cobourg**. The Town believed that we had allowed him access to live there and caused us some serious repercussions. We believe Mr. Gratton believes he is above the law and he has been a thorn in our side since 2015. Almost SIX YEARS ago.

**It is time to move on.**

If the Board wants to discuss a new CSA, may we recommend that we deal with your law firm to remove any personal animus between Mr. Gratton and the Declarant?

You should note that in earlier negotiations, we were trying to suggest a 50 – 50 % split in the total common area expenses of both condominiums. Five more years have now elapsed and all the NSCC72 equipment, etc. has had considerable wear and tear. It is now 10 - 11 years of age. A 50 – 50 % split on the common area repairs and maintenance is no longer appropriate as some of the items in your building will be quite close to the end of their useful life. Our building, in contrast, will be brand new when completed in 2022/2023 and this must all be taken account of.

The games that Mr. Gratton has been playing, all these years, have brought great disservice to the residents of NSCC72 and ourselves and he alone is accountable for this lamentable state of affairs.

**MR. GRATTON HAS COST THE TOWN OF COBOURG and LOCAL MUNICIPALITIES \$864,000 IN LOST PROPERTY TAX REVENUE ALONE, PLUS INCOME FROM THE LOCAL UTILITIES.**

A further 80 or 90 residents would have helped the Cobourg Downtown revitalization and the overall local economy.

**The Town would also have benefitted from Development charges, Building permit fees etc. and local properties on James & George Streets would have had increased property assessments also.** There is only one person to blame, not the entire current Board controlled by Gratton. **Just Mr. Gary Gratton.**

Finally, on the law suit launched by NSCC72 on May 18<sup>th</sup> 2017. It is almost 4 years old and will, in any event, expire in five years in 2022. A little more than a year from now and with no action being taken by NSCC72 to move this forward despite misleading statements to the contrary.

**Are the NSCC72 Owners being fully informed?**

Furthermore, NSCC72 Status Certificates paragraph 19 (a) are deliberately deceitful and extremely untruthful when, in the final sentence of paragraph 19 (a), it states "*however, at this time the corporation is working with the builder directly in an effort to resolve the outstanding deficiencies without the need for Court involvement*". **THIS IS ABSOLUTELY FALSE, MISLEADING, DECIETFUL AND TOTALLY UNTRUTHFUL** to prospective purchasers and possibly many current owners. A Status Certificate is intended, by law, to be factual so that purchasers can make informed decisions on their prospective new home. New buyers unquestionably do not want to be involved in a lawsuit costing tens, if not hundreds, of thousands of dollars.

The truth is **THE DECLARANT HAS HAD ABSOLULTELY ZERO COMMUNICATION WITH NSCC72 FOR SEVERAL YEARS AND IT IS THE EXPECTATION OF 1573454 Ontario Ltd. and Phoenix Genesis Financial Inc. THAT THIS MATTER WILL, IN FACT, END UP IN COURT.**

On that note, Phoenix Genesis Financial Inc. (PGF), one of the alleged Defendants, was not even incorporated when NSCC72 was built and registered and cannot be held accountable in any respect. Mr. Gratton presumably instructed your lawyers to substitute PGF as a Defendant for Phoenix Genesis Investments Inc. when he found that that company had been dissolved. Obviously, Mr. Gratton and the Board must have made this decision, as lawyers take instruction from their client. This deceitful action is frivolous, vexatious and without any Merit. PGF will be seeking substantial damages in Court for damage to its reputation.

We hope that the current Board can see through Grattons behaviour and reach out to the Declarant and perhaps call for a meeting of owners.

**We are asking at this point for NSCC72 to withdraw their Statement of Claim which is, in any event, barred by the Statute of Limitation.** If this is not actioned within the next 30 days, **PGF will sue Gary Gratton personally in Small Claims Court to have PGF removed from this action**

**for lack of merit and time delays in bringing the matter to Court.** He may not be covered by NSCC72 insurance for Directors liability

Sometime, in the near future 1573454 Ontario Ltd. has resolved to bring this overall ludicrous law suit to a head by filing a Statement of Defense and Counterclaim and substantial costs will then mount in legal fees and other costs for NSCC72. The Board should perhaps consult your owners before matters spin out of control. We believe you have a legal obligation as Directors of the Corporation to do so.

Finally, to help us understand your costs, could you please forward by e-mail within 7 days:

1. Current 2021 Budget
2. Latest Financial Statement August 31<sup>st</sup> 2020.
3. The last TWO RESERVE FUND STUDIES and updates to date.

We do not have Mr. Silverman's e mail address and we ask Mr. Genno to please pass this letter on to him personally.

Please govern yourselves accordingly.

Yours truly

A handwritten signature in black ink, appearing to read "John Lee".

A.S.O. 1573454 Ontario Ltd.

Encl. – Letter dated March 21<sup>st</sup> 2021 to NSCC72 Lawyers