

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, C. C.43, AS AMENDED**

**AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS  
OF CARRIAGE RIDGE OWNERS ASSOCIATION**

Applicant

**RESPONDING RECORD OF  
LORI SMITH AND BRUCE FLEMING**  
(Motion returnable July 2, 2020)

June 26, 2020

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Applicant

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# **TAB 1**

Court File No. CV-20-00640266-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, C. C.43, AS AMENDED**

**AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS  
OF CARRIAGE RIDGE OWNERS ASSOCIATION**

Applicant

**AFFIDAVIT OF LORI SMITH**

I, **LORI SMITH**, of the City of Pickering, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am an owner of intervals in both the Carriage Hills and Carriage Ridge resorts, and as such, have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief, and do verily believe it to be true.
3. To the extent that any of the information set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.
4. I have reviewed the survey of members proposed by the Court appointed Administrator, BDO Canada, set out at Tab 3 of the Applicant's Motion Record (the "**BDO Survey**"). Based on significant concerns that I have with the survey (together with the concern of approximately 463

from Lou Brzezinski to the Applicants' counsel, Leanne Williams and Mitch Grossell dated June 22, 2020, is attached hereto and marked as **Exhibit "A"** to this affidavit. In summary, the letter sets out the following concerns:

- (a) Selecting the "exit" option should not be binding, as requiring members to commit to an exit option in a binding fashion is premature at this stage, considering that the BDO Survey, by its own content, recognizes that answering to "exit" does not mean that a member has actually exited, and that further information on precisely how to exit and the *implications of exiting* will be provided after the survey. Also, the BDO survey, as presently drafted, does not appear to be capable of constituting a valid contract. It is unclear who any answering member would be contracting with. Further, since opting for the "restructuring" option is *not* binding, and members can still choose to exit later on, the survey as presently drafted, will unfairly skew the results toward restructuring. Members will simply defer their decision to exit until they have more information.
- (b) Obsolescence should be a third voting option. Prior surveys and member engagement suggests that there is very strong interest in obsolescence, as contemplated by the Timesharing Agreements. The current draft of the survey makes reference to the obsolescence process, yet fails to make it a voting option. Since the "exit" option includes payment of a mandatory exit fee, while obsolescence may not require such a fee, this would again unfairly skew the survey results.



- (c) Members who do not respond to the survey should not be counted as having voted for a restructured resort. There is a serious problem in reaching all members with notices and surveys, and members may have various reasons for failing to answer. Counting those who do not respond as a vote in favour of staying in a restructured resort will severely compromise the accuracy of the survey. A failure to respond should be treated for what it is – a non-response with no vote having been cast for any option.
- (d) Members who are delinquent in their payments should still be entitled to vote. This should be made explicit at the outset of the survey. Failure to do so may result in those who are delinquent in their fees feeling hesitant to vote out of fear for negative consequences.
- (e) Exit fees – there is no indication of what specific purpose the exit fees will be put to. Members receiving the survey may be similarly troubled by this point. This may cause those who truly wish to vote for “exit” to refrain from doing so at this stage, again compromising the accuracy of the survey.

5. While the concerns set out above are numerous, my primary concern is with the BDO Survey being designed in such a way so as to nearly guarantee that that the results will not be accurate. Those members who wish to exit, but who do not want to commit to doing so now, or to paying an exit fee, will simply answer that they wish to remain in a restructured resort. In this way, the results of the BDO Survey will not be accurate.

6. Attached hereto and marked as **Exhibit “B”** to this affidavit is a copy of the responding letter of Ms. Williams to Mr. Brzezinski dated June 24, 2020. In the letter, Ms. Williams

effectively rejects all of the suggestions and concerns we raised through Mr. Brzezinski's letter. Ms. Williams also states that the BDO Survey is a "balanced approach to the issues and is reflective of the varying interests of the Members".

7. Based on the foregoing concerns, I, together with my legal counsel, Blaney McMurtry LLP (who also acts for Karen Levins, another Carriage Hills owner), have prepared an alternative proposed form of survey which we believe will provide results that will far more accurately capture the true preferences of the owners. A copy of the proposed alternative survey is attached hereto and is marked as **Exhibit "C"** to this affidavit.

8. I am also of the view that this alternative form of survey is more consistent with the Order of Justice Conway dated May 15, 2020 and in particular, paragraph 5(b), which provides as follows:

(b) subject to Court approval, plan and propose a procedure to **ascertain the interests** of the Members going forward with respect to the Resort, whereby Members of the Applicant will be able to indicate, among other things, whether they wish to terminate their relationship with the Resort or continue their relationship with the Resort if a satisfactory restructuring solution can be developed; (**emphasis added**)

9. I note that this provision of the Order does not provide that the Administrator is to send the members a document that is binding (depending on which preference the responding member selects). Paragraph 5(b) merely requires that the Administrator propose a procedure to ascertain the interests of members going forward (i.e. prepare a survey that is non-binding in nature).

10. The alternative survey we are proposing also includes a more clearly defined obsolescence vote option, in accordance the obsolescence provision contained in the Timesharing Agreements. Those members who vote to exit may also "add on" a vote for obsolescence if they so choose, whereas the BDO Survey appears to combine "exit" and obsolescence into one category together.

11. Other members have also expressed serious (and similar) concerns with the BDO Survey. For instance, Walter Palmer sent a letter to BDO dated June 23, 2020. Attached hereto and marked as **Exhibit “D”** to this affidavit is a copy of Mr. Palmer’s letter. Among other things, Mr. Palmer wrote:

Let me say this at the beginning: nothing that binds a respondent to a consequential choice (committing to relinquish ownership, and paying an upfront fee of between approximately \$1,100 and \$2,300 per interval) can be construed as a survey intended to determine what the owners really want.

and

This mooted ‘survey’ is coercive in that it compels owners to take blind risks in terms of their financial prospects at the same time that those offering the survey will be the ones who then *decide* those outcomes. It’s not even ‘pay to get out’; it’s ‘pay to let us decide your larger fate in the context of allowing you the potentially relatively minor privilege of getting out now as opposed to later—how much later is up for grabs.’ To me—and presumably many other owners—this survey seems patently nonsensical and wrong. I dislike using such language but, with respect, it’s very hard for me to characterize this ‘survey’ proposal in any way other way. It’s just not a survey.

and

Right now, we get most of our info from member Facebook pages. This is not satisfactory.

And

I would like to see communication from BDO that effectively says, “Owners, this is what each of you has; these are your obligations to each other; your obligations to each other are eroding what each of you has; these are the ways that we could reconfigure your obligations to each other; in each case, you keep what you have, but in a different mode or form; which would you like?”

12. Attached hereto and marked as **Exhibit “E”** to this affidavit is a copy of another letter from members, Christie and Geoffrey Berry, also making similar complaints about the BDO Survey. Following their critiques of the BDO Survey, the Berrys state that an unbiased and unbinding survey should include the following criteria:

- (a) owner wants to exit right now;
- (b) owner wants to stay for the immediate future (3-5 years);
- (c) categorize non participation in the survey as a neutral non-answer;
- (d) give delinquent owners a voice without having to pay up their maintenance fees – the ability to pay is a significant influence on resort operations and it just is not logical to categorize them as a stay vote.

13. Attached hereto and marked as **Exhibit “F”** to this affidavit is a copy of an email from Karrie Thomas, a member of Carriage Hills who owns an interval for every other year. Ms. Thomas sets out a number of similar concerns as those noted above, and states, among other things:

I understand that the Administrator has structured the survey this way in order to provide some certainty as they determine how to restructure and that the exit now option is available partially to allow owners to exit prior to the next set of maintenance fees being due. The Administrator has failed to account for the fact that some intervals are every other year. As an owner of even years, I can vote stay, wait for the process to run it's course, and then choose to exit at the end because my maintenance fees are not due until November 2021. **Let's make it clear that I have every intention of exiting but because of the way this process is structured, I will vote to stay because I have the advantage of being an every other year owner (even year).** This will gain me time to understand the implication of choosing to exit as a number of owners will have gone through this process by that point. **(emphasis added)**

14. Ms. Thomas' email also generally makes the points that:

- (a) it is unfair to ask members who wish to exit to make a binding decision without knowing all of the implications of that decision;

- (b) that it is unfair that one group is asked to make a binding decision that they have no way of understanding the implications of, while allowing the other group to make decisions with all of the information they need to make an informed decision;
- (c) by the very nature of the survey, the results will be skewed and will not provide the Administrator with a good idea of which owners wish to stay and which wish to exit;
- (d) the Administrator will not be able to prepare a viable restructuring plan if, after they have developed the plan, many of the owners who the Administrator thought would stay do not;
- (e) there is no information or explanation of what the exit fee covers or if there will be additional costs;
- (f) it is unfair to charge an exit fee;
- (g) it is unfair and punitive to charge delinquent members an additional delinquency fee on top of the late charges and interest they are already being charged; and
- (h) the delinquent owners should be permitted the opportunity to vote. Those who cannot afford the maintenance fees and have fallen behind are the ones who need a viable exit option. By entrapping these owners and not allowing them an option to exit, the Administrator is only perpetuating the exact issue that has led the resort to the situation it now finds itself in.

15. Attached hereto and marked as **Exhibit “G”** to this affidavit is a copy of an email from Lois Brisbois, a Carriage Hills member, raising similar concerns as those set out above. Ms. Brisbois states, among other things:

**First of all, never ever have I participated in a survey where a particular choice would be binding on me.** In this case, because I truly want to exit from Carriage Hills Resort, indicating that in the survey means that I MUST then exit for **an unreasonable, unexplained set fee, with no further discussion and with no clear understanding of the full implications of my exit.**

and

As a paid up owner (no mortgage and all fees paid on time for 20 years) I expected to be asked if I desired exit at this time. I THEN expected to be made aware later of ALL the terms. I also expected to be allowed to exit for \$00.

**Even though I want to exit the resort, if I want to exit AFTER I know all the details, I would need to make a choice on the survey other than exit. That would make it seem that I was choosing stay/ restructure. For this reason, the survey, to me, is skewed towards restructure. I suspect that many in my position will feel the same, that we are being manipulated to achieve a particular outcome.**

Again I state, when have I ever completed a survey where my choice was binding? **Also, in this proposed 'SURVEY' only one choice is binding. Not fair.**

**BDO needs to send a real survey, analyze the results and provide the results to all Owners, including those who need land mail. We, the owners are paying a huge sum to BDO for their services.** There is time to get all this done before the next round of Maintenance Fees are due.

**(emphasis added)**

16. Attached hereto and marked as **Exhibit “H”** to this affidavit is a copy of an email from Glen McAllister addressed to The Honourable Justice Conway. Mr. McAllister states, among other things: “I [sic] very disappointed that BDO didn’t follow the court order and put forward a non-binding survey.” Mr. McAllister also set out concerns regarding a lowered trust level for the owners due to the Board of Directors and Consultative Committee having been required to sign a “very restrictive NDA”.

17. Attached hereto and marked as **Exhibit “I”** to this affidavit is a copy of an email from Anne Clavir, an owner of three intervals spread across both resorts, setting out similar concerns as the other members summarized above, and in particular, stating that the survey is not a survey, but a binding vote. Ms. Clavir also sets out that her family is undergoing hardship due to her husband’s catastrophic illness in 2005, and that they “desperately” need to exit the resorts before the end of this year.

18. Attached hereto and marked as **Exhibit “J”** to this affidavit is a copy of an email from Elizabeth Billyard, an owner of Carriage Hills, setting out similar concerns as the other members summarized above, including that the word “survey” is misleading, and the BDO Survey is not a “survey”, since it is binding. Ms. Billyard also states:

Misleading terms such as survey and exit are poised to confuse, preying on the elderly and the ill-informed desperate to escape this timeshare hell. My father ‘gifted’ this to me years ago as he could find no other way out and was desperate not to fall into collections. He duped me. How many more people here have to be duped. There needs to be a firm and complete exit option.

19. I make this affidavit in opposition to the relief sought by the Applicant, and in particular, in opposition to the BDO Survey, and in favour of the alternative form of survey attached hereto, and for no other or improper purpose.

**SWORN BEFORE ME** at  
the City of Toronto by Zoom video  
conference from the City of Mississauga in  
the Province of Ontario due to the COVID-  
19 pandemic, on June 26, 2020.

*V. Arman*

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Commissioner for Taking Affidavits  
**VAROUJAN ARMAN**

*Lori Smith*

---

**LORI SMITH**

# TAB A



**THIS IS EXHIBIT "A" REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

---

*A Commissioner of Oaths*  
VAROUJAN ARMAN

Lou Brzezinski  
D: 416-593-2952 F: 416-594-5084  
lbrzezinski@blaney.com

June 22, 2020

**WITHOUT PREJUDICE**

**BY EMAIL**

Leanne M. Williams/Mitchell W. Grossell  
Thornton Grout Finnigan LLP  
100 Wellington St. West, Suite 3200  
TD West Tower, TD Centre  
Toronto, ON M5K 1K7

Dear Ms. Williams:

**RE: In the Matter of The Administration Proceedings of Carriage Hills and Carriage Ridge Owners Association / Court File No. CV-20-00640265CL and Court File No. CV-20-00640266CL**

Thank you for your email of today's date attaching a copy of the survey of members for which the Applicants will seek Court approval at the hearing on July 2, 2020. We have had an opportunity to consult with our clients on a preliminary basis,

We note that the Orders of May 15 2020 (the "**Initial Orders**"), contemplate a two-step process: firstly a non-binding procedure to ascertain the interests of the members going forward with respect to the resort; and secondly, the development of an exit strategy for those members who wish to relinquish their memberships. Paragraph 5(b) of the Initial Orders do not contemplate that the survey stage will be binding in any fashion. This is sensible because the members' desires (and the quantum of members who opt for each specific option) must firstly be ascertained before being able to determine a workable exit strategy.

In addition, we offer the following suggested specific improvements to the survey:

1. Selecting the "exit" option should not be binding. We believe it is premature to require members to commit to an exit option in a binding fashion at this stage. The survey, by its own content, recognizes that answering to "exit" does not mean that a member has actually exited, and that further information on precisely how to exit and the *implications of exiting* will be provided *after* the survey. Members cannot reasonably be expected to vote for something that is binding when they have not been fully informed of the implications. We also note that the survey, as presently drafted, does not appear to be capable of constituting a valid contract. It is unclear who any answering member would be contracting with. Further, since opting for the "restructuring" option is *not* binding, and members can still choose to exit later on, the survey as presently drafted will unfairly skew the results toward restructuring. Members will simply defer their decision to exit until they have more information.
2. Obsolescence should be a third voting option. We have the benefit of prior surveys and member engagement, which suggest that there is very strong interest in obsolescence, as contemplated by the Timesharing Agreements. The current draft of the survey makes reference to the obsolescence process, yet fails to make it a voting option. Since the "exit" option includes payment of a mandatory exit fee, while obsolescence may not require such a fee, this would again unfairly skew

the survey results. There are three realistic options available to members: obsolescence, an exit if obsolescence is not possible, and remaining in a restructured resort. All three options should be presented in the survey.

3. Members who do not respond to the survey should not be counted as having voted for a restructured resort. We are all aware that there is a serious problem in reaching all members with notices and surveys, and members may have various reasons for failing to answer. Counting those who do not respond as a vote in favour of staying in a restructured resort will severely compromise the accuracy of the survey. A failure to respond should be treated for what it is – a non-response with no vote having been cast for any option.
4. Members who are delinquent in their payments should still be entitled to vote. We are of the view that this should be made explicit at the outset of the survey. Failure to do so may result in those who are delinquent in their fees feeling hesitant to vote out of fear for negative consequences.
5. Exit fees – we have yet to receive any indication of why the exit fees are required and to what purpose they will be put. We assume that members receiving the survey will be similarly troubled by this point. This may cause those who truly wish to vote for “exit” to refrain from doing so at this stage, again compromising the accuracy of the survey.

If the above-noted revisions are not incorporated, we expect to be instructed to make submissions to the Court that these changes should be included in the finalized and Court approved version of the survey.

We are available to discuss at your convenience.

Yours very truly,

**Blaney McMurtry LLP**



Lou Brzezinski  
LB/VA

cc: Sanjeev Mitra

# TAB B

**THIS IS EXHIBIT “B” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

---

*A Commissioner of Oaths*  
VAROUJAN ARMAN

June 24, 2020

**VIA EMAIL**

Blaney McMurtry LLP  
2 Queen Street East  
Suite 1500  
Toronto ON M5C 3G5

**Attention: Lou Brzezinski**

Dear Sir:

**Re: In the Matter of Carriage Ridge Owners Association (“Carriage Ridge”)  
In the Matter of Carriage Hills Vacation Owners Association (“Carriage Hills”)**

We acknowledge receipt of your letter dated June 22, 2020. We refer you to the report of BDO Canada Limited, in its capacity as the Court-appointed administrator (the “**Administrator**”), dated June 22, 2020 (the “**First Report**”). Capitalized terms not otherwise defined herein are as defined in the First Report.

As is apparent from a review of the First Report, the Administrator and the Consultative Committee considered the issues raised in your letter in the formulation of the Member Survey. For the reasons set out in the First Report, the Administrator is satisfied that the Member Survey is a balanced approach to the issues and is reflective of the varying interests of the Members.

Yours truly,

**Thornton Grout Finnigan LLP**



Leanne M. Williams

LMW/mm

# TAB C

**THIS IS EXHIBIT “C” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

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*A Commissioner of Oaths*  
VAROUJAN ARMAN



## **CARRIAGE RIDGE AND CARRIAGE HILLS MEMBER SURVEY**

### **PURPOSE OF SURVEY**

The purpose of this survey is to determine how many owners wish to exit the resort, and how many wish to remain in a restructured resort. All members may vote in this survey, regardless of the status of their account or if they are delinquent in the payment of their fees.

The basic parameters of a “restructured resort” are found below. The Administrator needs to ascertain the preferences of the owners as set out above in accordance with the Orders of The Honourable Justice Conway dated May 15, 2020, and to determine whether a restructured resort is a viable option, or if an obsolescence vote would pass the required threshold.

### **TIME TO COMPLETE SURVEY**

This survey will available to be completed for 45 days only commencing July \_\_ and ending August \_\_, 2020.

### **SURVEY QUESTIONS**

Please indicate your preference below by selecting ONE of the following two options, AND if you select option no. 1(a), note that you may also opt to select option no. 1(b) if you so choose. If you select option no. 2, you may not select any other option in addition to option no. 2.

- 1(a) I would like to exit from the resort** in accordance with an exit plan to be determined by the Administrator.
- 1(b) I also vote in favour of obsolescence**, in accordance with section 11.05(b) of the Timesharing Agreement, meaning that the resort will be deemed obsolete and liquidated and closed in the event that 75% of interval owners so vote.
- 2) I would like to remain in a restructured resort.** You will be provided with further information on what a future restructured resort will look like, together with the annual cost, after the survey is completed and an exit plan for those wishing to exit is approved by the Court (in the event that there are insufficient votes for obsolescence). Note that depending on the results of the survey, it may be that a restructured resort is not feasible if not enough owners wish to remain in a restructured resort.

Selecting your preference above is for the sole purpose of assisting the Administrator in determining the owners’ preferences, and is not binding upon you at this stage. You may still change your mind regarding your preference later on if you so choose.

**No decisions have been made on what will happen with the resorts at this time. The results of the survey will help to inform all owners, the boards of directors, the Administrator and the Court as to what the next steps should be.**

# TAB D

**THIS IS EXHIBIT “D” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

---

*A Commissioner of Oaths*  
VAROUJAN ARMAN

2020, June 23, 2020

Walter Palmer

81-295 Water St

Guelph, ON

N1G 2X5

[walt.palmer@gmail.com](mailto:walt.palmer@gmail.com)

m 519.829.8957; r 519.824.8719

Brad Newton, Senior VP, BDO Canada Ltd

All Members of the CHCR Court-Supervised Administration Consultative Committee

All Members of the Carriage Hill Board of Directors

**N.b., this letter is being sent to the email address provided, and described as being for the purpose of communicating to the parties relevant to this Court-ordered Supervision. Whoever, at that address, receives this communication is therefore obligated to distribute it to all who might be affected. That would include, inter alia, anyone on the service lists for relevant Court hearings, but certainly also members of the Consultative Committee, Members of the CHOA BoD, and any within BDO who have a role on this file. I did not include this note in my letter of the 16<sup>th</sup> and so I'd like to note that I want it treated the same way. If you are aware of any lapse in how I'm addressing this correspondence, I need to be alerted as to what needs to be altered in that regard.**

Re: DRAFT of "Carriage Ridge and Carriage Hills Member Survey"

To say that I am profoundly disappointed by this draft of a survey of the owners is quite beyond understatement. I find that I'm astounded by it, actually.

I'll try to work through some points, here, but this draft raises so many problematic points that weren't even in play when I sent a very long letter last week that I am at a loss as to where to begin and the impracticality, by sheer volume of work, of tackling the issues in any detail. I'll offer a few very brief critiques so that you have a beginning of understanding as to

how I, and what I suspect will be very many owners, fear that you are greatly miscomprehending what needs to be accomplished in order to resolve the ‘CHCR mess’ fairly and equitably.

Let me say this at the beginning: nothing that binds a respondent to a consequential choice (committing to relinquish ownership, and paying an upfront fee of between approximately \$1,100 and \$2,300 per interval) can be construed as a survey intended to determine what the owners really want. The Court Order, at 5 (b), describing the job of the Administrator, reads:

“subject to Court approval, plan and propose a procedure to ascertain the interests of the Members going forward with respect to the Resort, whereby Members of the Applicant will be able to indicate, among other things, whether they wish to terminate their relationship with the Resort or continue their relationship with the Resort if a satisfactory restructuring solution can be developed”

Well, (and noting that the order says “interests” and not merely “desires” or “wishes”) how can a survey fairly determine interests if it simultaneously, by the action of responding, creates an effect that alters those interests? The ‘exit fee’ goes to the kitty and materially affects the viability of the resort in the fewer hands that remain. That’s not a survey exercise; it’s a coercive action that seems difficult to distinguish from a tactical move that favours an outcome. It advantages those who opt to leave immediately by relieving them of the obligation to pay one year’s maintenance fees without disclosing how else they might find the option objectionable in the longer term. For instance, the draft wording says:

“You will receive further information on precisely how to exit and the implications of exiting after the survey is completed and a final exit plan is approved by the Court.”

Once the owners who have registered their desire to exit *and* they have paid a substantial exit fee, and *then* the ‘plan’ is submitted to the Court, and *after* the Court has approved the plan, then ... *then* these people find out the implications of their choice? The meaning of the word ‘survey’ is not really open to much argument; it generally relates to investigation for the purpose of description. It would be fair, in the way that we understand surveys, to ask: “How many of

you would like to exit if it meant paying an upfront fee of \$X,000, and if we are not able to tell you about any other consequences of such a choice?” Dumb question, but it still, at least it takes the form of investigating for the purposes of understanding and describing. “Pay \$X,000 and we’ll commit to letting you exit, but we won’t tell you what the other consequences are—either for you or the people who opt to stay—sign here,” is not really a ‘survey’ question.

Unlike an insolvency, the commercial viability and continued operation or the liquidated assets of the Resort are not the interests that are being served here. The resort does not exist by itself except in the physical form of land and buildings that have no rights, no obligations, and *no* servable interests. The interests here are solely the interests of each individual owner; and the obligations of those owners are not to the resort or its viability or continued operation but rather are obligations to each other. Knowing only that the current arrangement is not financially sustainable, this restructuring is for the sole purpose of re-figuring those obligations in the context of an analysis of those individual interests. The process should not make any assumption that either the continued operation of the co-ownership, on the one hand, or its dissolution and distribution of assets, on the other, is more favourable. Nothing is more favourable in terms of outcome than safeguarding the interests—wants, certainly, but also as combined with financial equity—of each individual owner ... no matter what that owner generally favours. To play want against balance of equity is to misconstrue what constitutes natural justice in a legal process that is acknowledged to be unique. Since there is no exact precedent for what is being attempted here, there is an opportunity to do something that comprehends this or any similar co-ownership and the difficulties that may arise out of that co-ownership in a way that guides co-ownership, both in processes of formation and dissolution.

This mooted ‘survey’, if enacted, would, *solely through that act of enacting*, immediately create two classes of owner with entirely different rights and prospects.

This mooted ‘survey’ is coercive in that it compels owners to take blind risks in terms of their financial prospects at the same time that those offering the survey will be the ones who then *decide* those outcomes. It’s not even ‘pay to get out’; it’s ‘pay to let us decide your larger fate in the context of allowing you the potentially relatively minor privilege of getting out now as opposed to later—how much later is up for grabs.’ To me—and presumably many other owners—this survey seems patently nonsensical and wrong. I dislike using such language but, with respect, it’s very hard for me to characterize this ‘survey’ proposal in any way other way.

It's just not a survey. And even if we thought that a neutral opinion/wish-gathering were not what is called for at this stage (and it *is*), and if we further thought that we needed immediate commitment on a general action item (and we don't) this is not a fair or just action. Everything that has been laid out here is wrong ... and wrong again.

A stated rationale for this approach is that surveying that contemplates various outcomes that are contingent upon the results of the selfsame survey is not feasible—that it implies iterative surveying that could go on forever. I question that hypothesis. It is quite possible—and it might actually save an enormous amount of time and confusion, and avoid guesswork—to present a 'matrix survey' that asks owners to select their preference within a selection of choices as to leaving and staying, and under what conditions. Having received response to that survey, hard numbers could be attached to a certain selection of options and those options could be put out for a necessary firm commitment.

*But ...* on the basis of the case that I laid out in me letter of June 16, I fundamentally do not accept that, among any such options, 'exiting' should cost an owner any money at all, unless the estimated value of the resort (as a physical asset that could be sold as is for simple real estate value or as a viable business) is negative, net of all liabilities and costs associated with dissolution. My interval ownership is a share value of equity that should be neither increased nor diminished by substituting a new arrangement whereby our equal obligations to each other remain equal but in a different form that makes financial sense. No winners, no losers. No one's equity appropriated in order to augment the viability of a certain outcome, argued to be preferable ... *and* known to be favourable to other owners, in terms of their equity share.

Another point: You say, "If you do not reply to the survey, the Administrator will have to assume that you are voting to STAY in the resort. The Administrator CANNOT assume that owners want to break a legal contract." Well, in general, non-response to a survey is not considered as supporting one response or the other. Further, if one *was* to make assumptions about non-response, and recognizing that financial non-viability of the resort is the precipitating event here, one would be better advised to assume that non-respondents are looking for escape as a far more reasonable choice. *And*, your claim that the administrator cannot assume that an owner would want to break a legal contract, while that would normally be true, we have evidence that 25% of owners have already expressed their willingness or necessity in breaking a legal contract. But that's not the most important reason that your assumption is wrong. The owners,

through their Board, have selected you to make a proposal to the Court that allows, specifically, for the breaking of an existing contract and coming up with a new one. So, yes, the Administrator can certainly assume that if two legal options are on offer—legally stay with a new contract, or legally leave with a new contract—in both cases owners are allowed to favour neither and no assumptions should be made about which one they thereby do favour. In fact, in the defence of owners who might wish to refuse to respond, the two options on offer do not at all properly reference each other as rational choice. It's a little bit like, "Are you walking to school or taking your lunch?" To which the appropriate answer is, "What?" Neither of the survey options is a survey question; they commit owners to actions; the actions change the character of the equity matters that are being decided. It's nonsensical.

The very last sentence of your draft 'survey' document reads: "*The results of the survey will help to inform all owners, the boards of directors, the Administrator and the Court as to what the next steps should be.*" This most assuredly is not what this 'survey' will accomplish.

I urge you to read the letter referred to above, and if this process is indeed supposed to be open and conducted on the basis of recognizing the views of the owners, I would like some acknowledgement that you are receiving and reading and incorporating the views of those owners who have taken the trouble to contact you.

Right now, we get most of our info from member Facebook pages. This is not satisfactory.

I would like to see communication from BDO that effectively says, "Owners, this is what each of you has; these are your obligations to each other; your obligations to each other are eroding what each of you has; these are the ways that we could reconfigure your obligations to each other; in each case, you keep what you have, but in a different mode or form; which would you like?"

Walt Palmer





# **T A B L E**

**THIS IS EXHIBIT “E” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

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*A Commissioner of Oaths*  
VAROUJAN ARMAN

Christie & Geoffrey Berry  
1162 Northaven Drive, Mississauga ON L5G 4E5

To the attention of Chief Justice Conway

RE: Proposal from BDO for survey to Owners of Carriage Hills Resort

Thank you for taking the time to listen to the opinions of owners on this matter. We own two every year weeks at Carriage Hills. We have been owners since 1999 and our fees are all in good standing.

We have read the proposed court submission that BDO has drafted and have some concerns that we hope you will take into consideration. We are concerned about the content of the survey and we also have concerns about extending the current board for another 6 months. Many of the owners do not have faith in the current board, if this process drags out beyond October 27<sup>th</sup>, a new Board would be helpful. We are of the opinion that the current Board is part of the problem with the current options being proposed, which is dragging this process out, costing more in legal and consulting fees.

Our concerns with the survey:

- the structure of the proposed survey significantly tries to influence the results
- it discriminates against elderly owners who may not have access to complete this survey on line and then assigns a vote for them because they can't participate
- the survey does not have enough information for people to make an informed decision

**Not following the two step process from the court filing in May:**

As we understand from the first court filing in May 2020, there was to be a two-step process. First survey the owners, second, use that information to determine options for owners to either exit or stay under restructured agreements. This survey has consolidated those steps together, and made part of the response binding. We are concerned that the survey process is significantly biased to get a specific result instead of seeking to find out what the honest interests of the owners are.

**Incorrect assumption that this survey will avoid the cost of a second survey:**

There is an assertion in the filing that this survey needs to be structured this way to avoid multiple surveys and costs. It is worth the cost to have two surveys and follow the path outlined in the original filing to have accurate information on where owners stand, and give owners the necessary information to make a very significant decision. With this current draft, a second survey is inevitable as they will need to find out that of the people who said they would stay still want to exit but said "stay" until they had more information or to avoid being bound by the "exit" option in the draft survey.

Flaws of the current survey:

- **Having the choice of the exit option as a binding option and the option to stay not a binding choice will influence what people choose.** There isn't enough information provided by BDO in this survey for people to choose properly - there can't be unless BDO has an accurate survey of how many people want to leave, how many people are undecided and how many definitely want to stay.
- **Having an online survey only and stating that people who do not complete the survey are automatically tabulated as "stay" influences the result as well.** By BDO numbers 14% of owners can't be reached by e-mail. Given that most of these are elderly owners who may not have access to get notified of the survey, or complete it, this takes away their ability to participate and assigns them a position on stay vs exit based on the fact that they can't participate. Your vote should not be taken away from you because you don't have e-mail.
- **Saying that delinquent owners aren't eligible to vote unless they pay all debts owed and are counted as "stay" if they can't pay up to be able to vote is not logical at all.** By the BDO numbers this is 21% of CH owners. This skews the results and ignores the reality that there are some significant hardship cases in delinquent owners who have health issues, have lost jobs, have had spouses die and leave them financially

vulnerable and desperately NEED an exit option. This 21% of owners are currently unpaid, counting them as a “stay vote” for people who will fund the resort going forward is just nonsense.

**An unbinding, unbiased survey is critical to get an honest view of owners wishes. It should have options which address the following criteria:**

1. Owner wants to exit right now
2. Owner wants to stay for the immediate future (3-5 years)
3. Categorize non participation in the survey as a neutral non-answer
4. Give delinquent owners a voice without having to pay up their maintenance fees - the ability to pay is a significant influence on resort operations and it just is not logical to categorize them as a stay vote.

Thank you for your time, we hope that we can reach an agreement to get an unbiased survey that generates accurate and honest results to help everyone find a way forward.

Sincerely,

***Christie & Geoffrey Berry (Carriage Hills Owners - 2 every year red weeks)***

# TAB F

**THIS IS EXHIBIT “F” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

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*A Commissioner of Oaths*  
VAROUJAN ARMAN

**From:** Karrie Thomas  
**Sent:** June 24, 2020 2:34 PM  
**To:** [klevins@rogers.com](mailto:klevins@rogers.com)  
**Subject:** Submission: Concerns with BDO survey

To whom it may concern

I own one week every other year at Carriage Hills Resort. I have been an owner since 2001. My account is in good standing.

While I have used and enjoyed the resort over the years, my situation has changed significantly since 2001. A divorce (which changed my financial situation), the increased maintenance fees, the fact that I no longer live 2 hours away from the resort, and the decreased ability to trade through exchange programs means I need to have a viable solution for exiting.

I want to make it clear- my end goal is to exit. I do not wish to continue my relationship with the resort.

I have reviewed the draft survey and court materials and I have concerns, particularly as it relates to the survey and the delinquency fee.

**Concerns related to the Survey**

The documents state that the survey will be binding for those voting to exit. BDO indicates that the survey must be binding to for those who wish to exit in order to avoid the need to conduct multiple surveys, which would cause delays and extra expense. However, the survey itself clearly states that choosing exit doesn't mean you have actually exited and that we will receive more information on how to exit and the implications of exiting after.

My concern is that we are being asked to make a decision which will be binding without knowing the implications of that decision.

Conversely, if you vote to stay, then your decision is not binding. You are given the opportunity to see what the restructured resort will look like and will then have the opportunity to decide if you want to stay or exit. That is, the implications of your decision at that point is abundantly clear and you are able to make an informed decision.

It's unfair that you are binding one group to a decision that they have no way of understanding the implications of, while allowing the other group to make decisions with all of the information they need to make an informed decision.

I understand that the Administrator has structured the survey this way in order to provide some certainty as they determine how to restructure and that the exit now option is available partially to allow owners to exit prior to the next set of maintenance fees being due. The Administrator has failed to account for the fact that some intervals are every other year. As an owner of even years, I can vote stay, wait for the process to run it's course, and then choose to exit at the end because my maintenance fees are not due until November 2021. Let's make it clear that I have every intention of exiting but because of the way this process is structured, I will vote to stay because I have the advantage of being an every other year owner (even year). This will gain me



time to understand the implication of choosing to exit as a number of owners will have gone through this process by that point.

By the very nature of the way the survey is structured, the results will be skewed and will not give BDO a good understanding of owners who wish to remain and those who want to exit. It will simply give BDO an understanding of those who are willing to take a risk and make a decision to exit without knowing what that entails. Of the remaining owners, you will have some, like me, who are waiting out the process with full intention of exiting, some who may decide to exit after seeing the restructured resort, and some who may decide to stay.

How is BDO supposed to come up with a viable restructuring plan under these circumstances- if, after they have developed a plan, many of the owners they thought would stay, do not?

At that point, the estimates future for maintenance fees will be inaccurate as fewer owners will remain (same costs divided by fewer people).

My additional concern is that there is no information or explanation of what the exit fee covers or if there will be additional costs. For example, is an additional cost one of those implications that has not been determined yet? Will there be legal fees on top? I have heard from a member of the Consultative Committee that the exit fee is akin to a cancellation or termination fee that you would pay a service provider if you cancelled, say your cell phone contract, early in order to compensate them for not fulfilling your obligations of the contract.

Can you actually ever fulfill a perpetual contract?

The documents submitted to the court clearly states “The exit fee is payable in exchange for the termination of the perpetual obligations to the Applicant.” My understanding is that going forward, this perpetual clause will need to be addressed for all those who are staying. Will those who stay have the perpetual clause removed from their contract? If so, will they have to pay a fee to have it removed from their contract? If not, it’s not fair as those wishing to exit now are being charged a fee based on the notion of compensation for termination of the perpetual obligations.

What about those individuals who inherited the contract? Is it fair for them to have to pay a fee to terminate the perpetual obligations of a contract they inherited from their grandparents? The sheer nature of the contract resulted in them inheriting the contract when they did not want to, and now they will have to pay because they wish to terminate that very aspect of the contract?

My recommendation would be that the survey not be binding unless all additional implications, costs and timeframes can be provided to those who choose to exit in advance of choosing this option. In addition, the exit fee need to be further explained and fairly applied. If it’s a fee that applies to the termination of the perpetual obligation in the agreement and this clause will be removed for owners who remain as part of the restructuring, then the fee should be paid by everybody or nobody. If the fee is for something else, it should be very clearly defined what that fee covers and what it does not.

In addition, the court documents propose that those who are delinquent not have the opportunity to vote. Of all cohorts of owners, the ones who need a viable exit option are those who cannot afford the maintenance fees and have fallen behind. Furthermore, by entrapping these owners and not allowing them an option to exit, the Administrator is only perpetuating the exact issue that has led the resort to the situation in which we now find ourselves.

Do you think these delinquent owners are likely to become good paying owners under a new model? Not likely. Therefore, the good standing owners that remain in a restructured resort will continue to have to cover the costs of those who cannot pay. Is this viable? History has proven that it is not.

The only viable option is to assist these delinquent owners in their exit. I'm not suggesting that their overdue fees be forgiven. However, their account status should not impact their ability to make a choice to exit and thereby binding them to additional maintenance fees that they cannot afford. Overdue accounts can still be collected on, following the previous process regardless if the owner stays or exits. It should also be noted that these delinquent owners will likely have a hard time paying an exit fee.

### **Delinquency fee**

I am fortunate to be in a position where my account is current and I would not be assessed this fee. However, I have concerns about the fairness of this fee for those who have overdue accounts. My understanding is that, once an account is 30 days overdue, a hefty late fee is already applied. Interest accrues and accounts are eventually sent to collections and, if necessary, court where the account holder is responsible for all overdue fees and court costs. The account holder has already been assessed a late fee, has paid interest and potentially collections or court costs. It's not clear to me what the purpose of this delinquency fee is and how it will help resolve the issue of overdue accounts in the cases where account holder cannot pay. (Yes, I recognize some people may have chosen not to pay on principle but there are those who are choosing between food on the table and paying a maintenance fee). The application of an additional delinquency fee seems overly punitive and will only further the suffering of those who cannot pay and need a way to end their obligation.

I remain hopeful that this process can provide a fair and equitable outcome for everyone- those who want to exit and those who want to stay. My hope is that the court considers some of the issues raised above and ensures that the solution is fair and equitable for all.

Thank you for your time and consideration

Karrie Thomas

# TAB G

**THIS IS EXHIBIT “G” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

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*A Commissioner of Oaths*  
VAROUJAN ARMAN

-----Original Message-----

From: brisl <[brisl@aol.com](mailto:brisl@aol.com)>

To: brisl <[brisl@aol.com](mailto:brisl@aol.com)>

Cc: brisl <[brisl@aol.com](mailto:brisl@aol.com)>

Sent: Wed, Jun 24, 2020 08:10 AM

My response to the Draft Proposed Survey from BDO to Carriage Hills and Carriage Ridge Owners  
 First of all, never ever have I participated in a survey where a particular choice would be binding on me. In this case, because I truly want to exit from Carriage Hills Resort, indicating that in the survey means that I MUST then exit for an unreasonable, unexplained set fee, with no further discussion and with no clear understanding of the full implications of my exit. I live 5 minutes from the resort. I use it weekly and I still want to exit as the yearly fee for my one red week is no longer a sensible expense for me. I share the pool with guests who get their week for well under \$500. while my fee for this year was nearly \$1500.

As a paid up owner (no mortgage and all fees paid on time for 20 years) I expected to be asked if I desired exit at this time. I THEN expected to be made aware later of ALL the terms. I also expected to be allowed to exit for \$00.

Why would I have that expectation?

Here are my reasons:

1. The resort has value in a prime area of Ontario. Living here I know that. Horseshoe Valley is slated for huge development.
2. My investment for my one red week over the 20 years has been nearly \$40 000. My Timeshare was sold to me as an investment. It's not the Owners' fault that the Managers deemed it unmarketable.
3. Wyndham has a program called Ovations. Paid up owners in USA resorts may exit under that program for \$00. For reasons unknown to us, Wyndham does not offer the program to owners of Canadian resorts. I have been challenging that unfairness on my own and Wyndham head office has given me a case number and a case worker to explore my requests.
4. I have no proof but a very strong feeling that Wyndham has a Master plan to get most of us out at a cost to us, to fix up the resort with our funding and then to take it over, in whole or in part, for themselves as a profit making hotel destination in a prime location. The new VETTA Spa being built is just across the road from the Resorts and it will bring huge business into the area with a need for nearby rooms. Living near the resort and being aware of what is going on in the Valley leads to my speculations.
5. I have NEVER been in arrears, so why must I pay to exit? Why must I pay to support a restructured resort for those who want to stay?
6. Although I never agreed to pay extra fees to make up for delinquent owners, I have had to do just that for a number of years. There has been no added value for paying those extra fees, not even the offer of an extra night now and again. Many of the Owner perks have disappeared over the years. I could go on.

Even though I want to exit the resort, if I want to exit AFTER I know all the details, I would need to make a choice on the survey other than exit. That would make it seem that I was choosing stay/ restructure. For this reason, the survey, to me, is skewed towards restructure. I suspect that many in my position will feel the same, that we are being manipulated to achieve a particular outcome.

Again I state, when have I ever completed a survey where my choice was binding? Also, in this proposed 'SURVEY' only one choice is binding. Not fair.

BDO needs to send a real survey, analyze the results and provide the results to all Owners, including those who need land mail. We, the owners are paying a huge sum to BDO for their services. There is time to get all this done before the next round of Maintenance Fees are due.

Lois Brisbois  
Owner of one red week at Carriage Hills since 2000  
416 347 0921

# TAB H

**THIS IS EXHIBIT “H” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

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*A Commissioner of Oaths*  
VAROUJAN ARMAN



-----Original Message-----

From: Glen <[g7mcal777@gmail.com](mailto:g7mcal777@gmail.com)>  
Sent: June 25, 2020 6:49 AM  
To: [chcrowners@gmail.com](mailto:chcrowners@gmail.com)  
Subject: BDO EMAIL

Honourable Madam Conway,

I very disappointed that BDO didn't follow the court order and put forward a non-binding survey.

If they had of put more clarity in the exit option or a box to check, saying I wish to make my choice binding, maybe.

It feels like we are being taken advantage of all over again, 22 years later.

The BOD and CC are required to sign very restrictive NDA. This lowers the trust level for the owners they work for. I have never been asked to sign an NDA, to not disclose information to my employer before. I understand that there is personal information that doesn't need to and shouldn't be disclosed. If that is all the NDA covered I would understand.

How would you like to get a redacted lawyers bill for a BDO report that they don't let you see because of NDA, but you still have to pay the \$200,000 bill for?

This is how our BOD and their, not our lawyers, have treated us.

It is hard to trust that they are fulfilling their fiduciary duty, when they tell you nothing except what to pay and can't follow a straight forward court order from you.

Thank you,  
Glen McAllister

Sent from my iPad

# TAB I

**THIS IS EXHIBIT “I” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

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*A Commissioner of Oaths*  
VAROUJAN ARMAN

----- Forwarded Message -----

**From:** Anne Clavir

**To:** "[chcrowners@gmail.com](mailto:chcrowners@gmail.com)"

**Sent:** Thursday, June 25, 2020, 11:15:40 a.m. EDT

**Subject:** BDO email

Dear 3 Amigos

Thank you for the opportunity to state my concerns regarding the 'survey'. I am grateful for all your efforts and I was happy to donate to GFM this week (anonymously as I always do online).

We are a family undergoing hardship due to my husband's catastrophic illness in 2005. He has been in a nursing home for 15 years. (Irene included our situation when she published her articles about CHCR.) We desperately need to exit before the end of this year. We own 3 intervals - 1 at Carriage Hills and 2 at Ridge.

Here are my concerns and suggestions regarding BDO's July 2 court submission.

1. The 'survey' is not a survey but a binding Vote.

(I am a Market Research Consultant and write survey questionnaires as part of my work - a survey is not binding.)

It should not be considered as a survey as stipulated in 5b of the May Court Order.

My understanding of 5b is that a survey will be undertaken to determine the wishes of Owners based on a proposal of how exit would be managed.

The question might be something like this -

"If CHCR would provide a way for you to exit your timeshare in 2020 that would include:

a) Signing an agreement that stipulates .... (itemize all the clauses in the agreement).

b) Paying \$.....

In return, you will no longer have the right to ...."

(outline the rights of ownership that Owners would give up).

2. Owners should get legal advice before they can answer Yes to Exit to the question as currently written since we do not know all the terms of what we are agreeing to. This is especially important since we (along with other Owners) did not get legal advice before we signed the original Timeshare Agreement and did not understand the Perpetuity clause.

I am concerned that, if I do not get legal advice before agreeing to the terms of Exit, there will be something in the agreement or maybe something not written in the agreement, that will be seriously detrimental (for example, maybe Owners will be liable for future debts of CHCR even after they exit).

My suggestion is that whatever agreement that needs to be signed is included in the question. Then Owners could get a lawyer to review the document before answering the question.

3. Exit fee -

a) There should be no fee required to exit since the Owners Association will have the advantage of these intervals to rent as they wish and receive remuneration or for these intervals to be part of a restructure or sale of the resorts.

b) If there must be a fee, it is much too high. I suggest it should be 1/2 the usual maintenance fee.

To Legal team of  
Blaney McMurtry -

Please use whatever you need from this email. You can use my name if that will add credibility to your submission.

I appreciate the work you did for the May court date.  
I am sure you can convince the judge to make the appropriate changes to the July court order.

Thank you very much.

Anne Clavir

# TAB J

**THIS IS EXHIBIT “J” REFERRED  
TO IN THE AFFIAVIT OF LORI SMITH  
SWORN BEFORE ME THIS 26<sup>TH</sup>  
DAY OF JUNE, 2020.**

*V. Arman*

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*A Commissioner of Oaths*  
VAROUJAN ARMAN

----- Forwarded Message -----

**From:** Elizabeth Billyard

**To:** Karen Levins

**Sent:** Thursday, June 25, 2020, 12:28:15 p.m. EDT

**Subject:** Response to Exit Survey

Regarding: Proposed Carriage Hills & Carriage Ridge BDO Survey.  
Elizabeth Billyard. Owner Carriage Hills.

I am writing as there are several concerning factors in the BDO survey including:

1. The word 'survey' is misleading. The introduction states the purpose 'to determine which owners wish to immediately exit their resort intervals and which owners may wish to maintain'. However, the 'survey' than states **'This survey will be binding on those voting to exit.'** This is not a survey as it is a binding.
2. The word 'exit' is misleading. **Choosing the exit option below does not mean you have actually exited the time share.**
3. There is no boundary to how much more those that want to exit will be charged in the future. As stated **'You will receive further information on precisely how to exit and the implications of exiting after the survey'**. A future now in the hands of a segment of owners who want to stay and a Management Company + Corporate owner that is motivated to maximize profits. Likely those in 'exit' could no longer run for the Board and would completely lose any voice.

I want to exit in a way which is reasonable and equitable to all parties. Possibly an exit fee is reasonable. However, as the survey advised, this binding agreement to exit does not actually offer exit.

Misleading terms such as survey and exit are poised to confuse, preying on the elderly and the ill-informed desperate to escape this timeshare hell. My father 'gifted' this to me years ago as he could find no other way out and was desperate not to fall into collections. He duped me. How many more people here have to be duped. There needs to be a firm and complete exit option.



# TAB 2

Court File No. CV-20-00640265-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, C. C.43, AS AMENDED**

**AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS  
OF CARRIAGE HILLS VACATION OWNERS ASSOCIATION**

Applicant

**AFFIDAVIT OF MICHAEL DEEGAN**

I, **MICHAEL DEEGAN**, of the City of Whitby, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am an owner of vacation intervals in both the Carriage Hills and Carriage Ridge resorts, and am also a member of the Consultative Committee put in place by way of the Order of the Honourable Justice Conway dated May 15, 2020, and as such, have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief, and do verily believe it to be true.
3. To the extent that any of the information set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.
4. In order to fulfill my role on the Consultative Committee, I signed a Non-Disclosure Agreement (**NDA**). In swearing this affidavit I have taken great care to ensure that I not disclose any information which is considered "confidential" under the terms of the NDA.

5. As a fifteen plus year owner at the Carriage Hills and Carriage Ridge resorts, I am very disappointed in the lopsided and unfair binding survey proposed by BDO as Administrator.

6. Although my family and I have enjoyed the resort over the years, the time has come in our lives that we are simply paying because we are obliged to. Escalating maintenance costs, and massive projects that overrun budgeted allowances forecast no improvements in the financial situation of the resort. I was pleased when I learned that BDO was being brought to the table to assist in putting an end to the resorts' financial troubles, and was expecting BDO to run a fair survey process that would accurately determine the members' interests. However, I view the survey proposed by BDO as much more than a survey. In my view, it is a contractual commitment, or it is a "non-choice".

7. On the heels of the COVID-19 pandemic, I have only just returned to work after being out of work for ten weeks. My business insurer denied the "business interruption" portion of my insurance, and I used my CERB payments to cover costs in my small business until the Small Business Loan program was introduced, which requires me to go into debt just to ensure that I still have a job to return to.

8. I simply cannot afford the fee proposed to "exit". I own three vacation intervals: two at Carriage Ridge, and one at Carriage Hills. These are all "every year" intervals. I want to choose to exit, but I cannot afford the financial commitment, nor feel confident due to the lack of information provided regarding the exit. I will not vote to stay in the resort because I do not want to remain in the resort. I thought I could simply not answer, but I understand that by doing so, BDO will in fact record a vote to stay in a restructured result. I do not understand why this would be the case, when BDO was supposed to simply prepare a survey of the members.

9. As a result, I simply do not know what to do. In a democratic Owners Association in a democratic society I am unable to have my voice heard unless I commit to paying a fee. The only other choice I have is to choose the option that I do not believe in. This whole process seems to have moved from “the delinquent owners are causing the resort to go insolvent” to “let’s make money from exiters”.

10. If no “exit” is made available at this time, my view would be that the delinquent owners should still be removed and the resorts restructured to maintain their financial viability. Us owners who are being made to pay extra to cover the delinquent owners are not the problem, the non-paying owners are the problem, yet we are the ones being asked to pay.

11. I make this affidavit in opposition to the relief sought by the Applicant, and in particular, in opposition to the BDO Survey, and for no other or improper purpose.

**SWORN BEFORE ME** at  
the City of Toronto by Zoom video  
conference from the City of Mississauga in  
the Province of Ontario due to the COVID-  
19 pandemic, on June 25th, 2020

*V. Arman*

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Commissioner for Taking Affidavits  
**VAROUJAN ARMAN**

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**MICHAEL DEEGAN**

**IN THE MATTER OF the *COURTS OF JUSTICE* and  
*ACT, R.S.O. 1990, C. C.43, AS AMENDED***

**IN THE MATTER OF THE ADMINISTRATION  
PROCEEDINGS OF CARRIAGE RIDGE OWNERS  
ASSOCIATION**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced in Toronto

**RESPONDING RECORD OF  
LORI SMITH AND BRUCE FLEMING  
(MOTION RETURNABLE JULY 2, 2020)**

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