SUPERIOR REGION CONDO NEWS

WINTER
2020

Canadian Condominium Institute
Institut canadien des condominiums
Northwestern Ontario Chapter

IN THIS ISSUE

01 Winter... Is Your Condo Property Ready?

03 Common Element Modifications by Owners – The Role of the Board

04 Tips for Effective Condo Communication

05 Electronic Voting Still Met With Resistance

06 Better Late Than Never

09 Proclamation of Amendments to the Condominium Act, 1998

10 Court Declares Condo Owner a Vexatious Litigant

12 Condos Face Crisis in Property Management

14 Canada: Mould In Condo Unit: Who's Responsible?

16 What to Do When Condo Owners Send Insulting and Harassing Emails?

2020 / 2021

BOARD OF DIRECTORS

President & Treasurer
Derek Tycholas *(LCPS Chartered Accountants)*

Secretary & Newsletter Chair
Sue Duncan *(Synergy Property Management Solutions, Inc.)*

Education Chair
Doug Shanks *(Cheadles LLP)*

Membership Chair
Renee Larocque *(Mirabelli Real Estate Corp.)*

Board Member
Doug Steen *(Superior Property Maintenance)*

Board Member
Dan Campbell *(Copperfin Credit Union)*

Board Member
Myles Kuharski *(Gillons' Insurance)*

Have a great suggestion for an article in our next newsletter?

E-mail nwontario@cci.ca

Canadian Condominium Institute | CCI | Institut canadien des condominiums
Northwestern Ontario Chapter

Stay up to date with the latest news & events by sending your email to nwontario@cci.ca

PO Box 10692, Thunder Bay, ON P7B 6V1 T 807.345.5963 F 807.346.8892 cci-nwontario.ca nwontario@cci.ca

David Williams

Winter... Is Your Condo Property Ready?

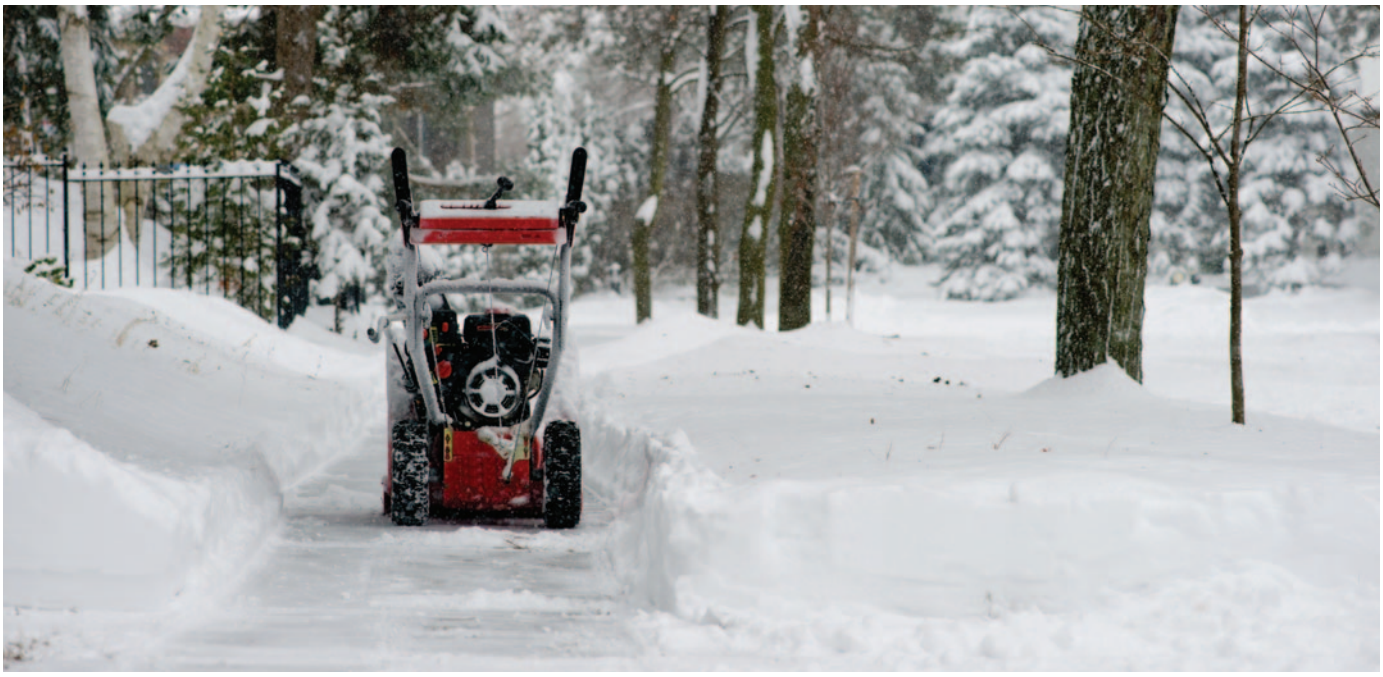
Whether your Condo property is a high-rise or a town house development, "Old Man Winter" is on his way and the right preparations need to be made. A good plan that starts with a fall "walkabout" by a Board member, the property manager, and the landscape contractor is vital.

We talked with landscape contractors serving the Wentworth area and asked them for their advice, and a number of common themes emerged. It starts with a good plan, and includes good communication among contractor, property manager, and residents. In this year of COVID, greater caution will be important from an insurance point of view because more residents (snowbirds) will be staying home and there will be greater potential for slip and fall accidents.

We spoke with Atrens-Counsel Insurance Brokers about this. Best practices would include ongoing careful observation of the site and the logging of weather conditions, surface conditions, and time of day that observations were made.

Residents' Considerations

Whether you have a balcony (high-rise) or a deck (low-rise), outdoor furniture needs to be stored or covered and secured. Winter and early spring winds can cause loose furniture to fly away. Covering metal furniture will slow down the potential for rust formation. Similarly, annual flower boxes should be emptied, cleaned, and secured for next year's use.



> “A great deal of stress (spelled phone calling) can be avoided by maintaining a good level of communication with the residents.”

Outdoor mats/rugs of the plastic ribbed sort can be rolled and stored in a dry location. Most types of these rugs can last a few years, and if they are dry when rolled up, they will be in good condition for future use. A warm/dry basement or storage locker is better than a damp cold garage for storage of these rugs.

Do not forget to turn off the water supply to all outdoor taps. Often, shut-off valves are equipped with little drain valves that should be opened.

Board Member and Property Manager Considerations

Our experts all agree that a good winter plan is important. This is where the walkabout plays a significant role. Here are the points to be agreed upon:

- What areas need to be kept snow free.
- Where snow can be stored so that corner views are not rendered blind to traffic.
- Identify broken/decaying curbs, electrical boxes, fire hydrants, and other obstacles with marker rods.
- Agree on timing of plowing in the case of storms – This is important particularly if your community has residents who may need to get out early for medical appointments; MRIs and CT scans are difficult to re-schedule.
- When snow storage areas become full, excessive snow should be removed by truck.
- Sprinkler systems should be purged of water to avoid winter damage from freezing.
- Grass should be cut shorter for winter. Longer grass promotes mouse and mole activity under the snow resulting in lawn problems in spring.

Expectations + Communications = Everybody Happy

So, we have talked about the fall walkabout (Contractor/Property Manager/Board Member). We have to think a plan has been derived and even agreed upon. But there is one more constituent to be considered: the residents! The best plan can go awry if the residents are expecting one thing and the other two groups decide upon something different.

A great deal of stress (spelled phone calling) can be avoided by maintaining a good level of communication with the residents. They do own the corporation. If they understand the plan up front (timing, snow piling, salting, etc.), they will probably jump on board. Why? They can measure the performance against what has been communicated to them.

Have a great winter and remember… good observations, planning and good execution of the snow plan will make the winter seem like…….well, next best thing to Florida!

Dave Williams is a graduate of York University and retired company executive residing in Garth Trails Condo Community in Hamilton.

Thanks to our experts for their input:

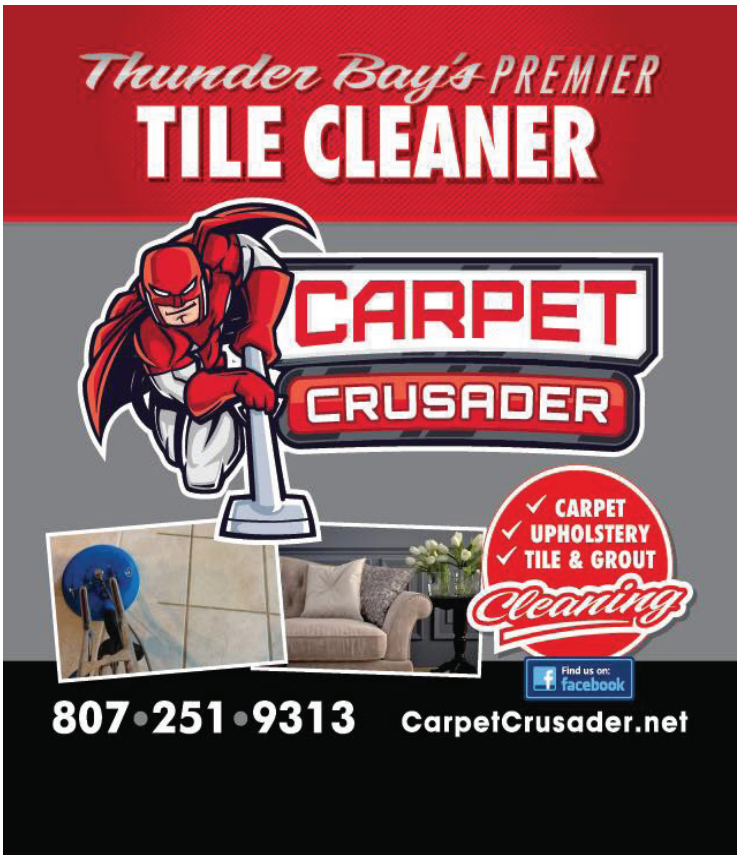
Henri Gelms, Danasy Landscaping and Maintenance

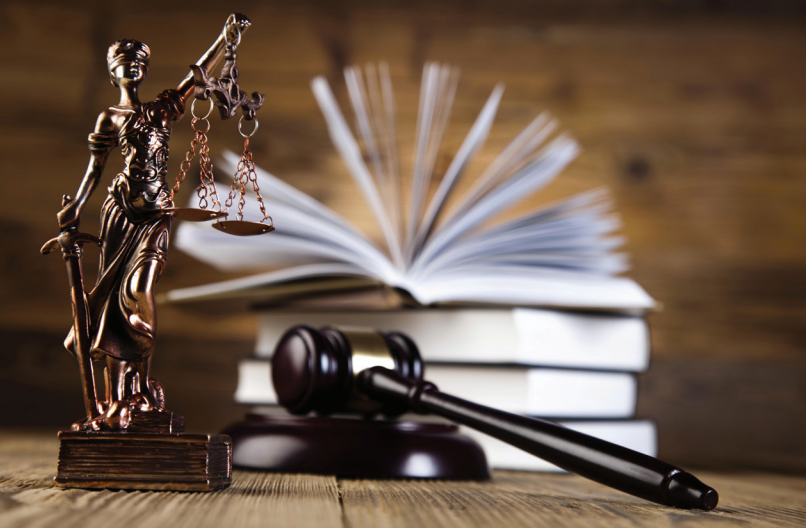
Andrew Westrik, Gelderman Landscape Services

Mark Shedden, Atrens-Counsel Insurance Brokers

Maria Durdan, SimpsonWigle LAW LLP

CN





Common Element Modifications by Owners – The Role of the Board

February 18, 2020
by James Davidson

A recent decision of the Ontario Court of Appeal (in the case of **Noguera v. Muskoka Condominium Corporation No. 22**) confirms the lower Court's ruling on the role of a condominium Board when dealing with an owner's request to make a change to the common elements.

A common element modification by an owner requires the following:

1. Board Consent.

2. In many cases, the involvement of all owners under Section 97 of the Condominium Act.

3. An agreement between the owner and the Corporation, registered on title to the owner's unit (per Section 98 of the Condominium Act).

4. Any other proper requirements contained in the Declaration, By-laws or Rules.

What are the obligations of the Corporation / the Board when dealing with an owner's request to change the common elements?

In the Noguera case, the Board had given approval (on specific terms) to requested openings between two of the units. Based on that approval, the Nogueras had purchased an adjacent unit and carried out various renovations (including the approved openings between the two units). A subsequent Board then purported to change the approved terms....and the Nogueras were told to close up the openings if they didn't agree to the new terms.
The Nogueras claimed that the condominium corporation's treatment was oppressive (in relation to other matters as well as the "common element modification issue"). Both the lower Court and the Court of Appeal agreed. Among other things, the Court of Appeal held as follows:

(According to the condominium corporation,) The parties should be left to negotiate the terms of the (Section 98) agreement with the Condominium retaining its complete discretion. We reject this argument. ... The Condominium had provided s. 98 agreements to the other unit owners who had completed alterations but the one prepared for the Nogueras to sign was both onerous and different.

The Courts (both the lower Court and the Court of Appeal) therefore ordered that the Nogueras enter into a Section 98 Agreement on **less onerous terms** that were also consistent with the Board's original approval.

In my view, the message of the Noguera case is as follows:

Generally speaking, condominium corporations can say "yes" or "no" to an owner's requested change to the common elements. However, the Corporation (the Board) must act fairly, meaning:

The Board must treat each request with fairness and consistency.....without making decisions based on arbitrary or inconsistent grounds. Put another way, each request must receive equivalent and fair consideration. The Board's decisions must be consistent from one owner to the next.

If approval is given, the terms of approval (and the related requested Section 98 Agreement) must be consistent with terms imposed upon other owners in similar situations.

If approval is given, the terms normally can't be changed (particularly after the owner has taken steps or made commitments in reliance upon the provided approval). [A change to the terms might be acceptable, I think, if something has been overlooked (and revised terms are required as a result) ...provided the owner hasn't acted in reliance upon the previous terms.]

The bottom line is ***fairness.*** If you treat each request with fairness and consistency, you won't go wrong!

Tipsfor Effective Condo Communication

December 17, 2019
by Sue Langois

Five devices to use to make condo notices that pop

Resident communication is a critical part of directing and managing a condominium corporation. And while disseminating information to a diverse and (at times) mercurial audience can be challenging at best, many common condo management issues (e.g., noise, pets, short-term rental, etc.) can be proactively dealt with when an audience is reached regularly.

Traditionally, condominiums have relied on various communication tools such as bulletin boards, phone calls, and email. As technologies evolve, however, many are also adding digital displays to their communication toolbox – especially when located in highly-trafficked areas.

There's a reason the expression "content is king" is popular in the communication space. Content is the most crucial aspect of all; it must grab and keep an audience's attention. Uploading a Word document or PDF file to a digital display is not likely to get residents' attention any more than its predecessor the cork bulletin board did. Therefore, condo communication needs a fresh approach – something that gets people's attention, buy-in, and action to achieve and maintain a healthy condo corporation.

Here are five devices to use to make condo notices that pop:

Drama

Catching the attention of condo residents can be challenging, so a little drama can go a long way. Try to shake things up a bit from the usual. For example, a four-paragraph notice asking residents to slow down in the parking garage is not nearly as compelling as a more dramatic approach.

Humour

Getting a message across about the importance of following the rules without sounding bossy or rude can be challenging – especially when the intended audience is only a portion of the condominium resident population. Using humour can highlight an issue without alienating a population segment.

Shame

Usually reserved for condos with significant issues, a "shame" campaign shines a light on problems that need a quick and effective resolution. Things like littering on the property and tossing items from balconies are not only bad for the property's curb appeal and value, they can be outright dangerous and injure someone. This approach requires board members who are confident in their evaluation of the issue and are willing to stand by the decision to bring it to light. The timing of the campaign run is important too. Shame campaigns are typically quite short but often produce sweet results.

Creativity

Traditionally, condo residents have been subjected to notices that announce upcoming events or attempt to convey rules in a manner not designed to capture attention. Word documents or PDF files are hauled out of a file, the date is changed, and the message is slapped up on a display to share with residents.

This makes sense given the fact most property managers are not trained copywriters or graphic designers. Imagine the attention, then, when a notice gets posted that's totally outside the box.

Brevity

No matter the message, and regardless of the design skills of the property manager, the main way to get the audience's attention is to keep the message brief. Whether it's about window washing, heating changeovers, or other upcoming events, the date and time are often all that most residents need or care to know. Including the name of the contractor or explaining the mechanics of an HVAC system are not relevant to the average audience, and those that really want to know will likely seek it out if needed.

A visually decluttered notice on an elevator display means it can be seen and absorbed in four seconds or less, and that's the kind of message that's key to keeping everyone in the loop.

Making a statement

Drama, humour, shame, creativity, and brevity are all useful when it comes to crafting notices for condo residents. Use them wisely and well, and you'll discover what great communication can do in a condominium in regards to lowering costs on utilities, tidying up the property, and even shortening AGMs and board meetings as residents become more knowledgeable. And in the end, that's just good condo business.

Sue Langlois is Founder and CEO of DigiNotice Inc.

Electronic Voting Still Met With Resistance

January 20, 2020
by Denise Lash

New system in condos dramatically increases unit owner participation

Opponents of electronic voting are scared. They're scared electronic voting is going to expose the archaic and flawed system of proxy voting for what it is: unnecessary and obsolete.

They're also scared because they know that it is largely through proxy voting that some people have been able to maintain and secure their positions for extended periods, giving them years – sometimes decades – of unchallenged control and all the benefits that come with it. So, while the rest of the world has already adopted electronic voting or is moving quickly to embrace it, we see self-interested pockets of resistance in Canada trying to hang on to the status quo.

The first telling observation is that these pockets of resistance are not condominium owners themselves. If that strikes you as strange, it should. Ask any owner who has used electronic voting, and they will tell you the inescapable truth – they love it. They get to cast their own vote, using an encrypted email link that connects with a secure online voting site. They vote at their convenience and in private. Furthermore, they participate in the voting process and express their personal preferences, which are free from the self-interested influence or interference of others.

None of this should come as any surprise. Owners are no different than any other consumer; they expect the same seamless and easy-to-use digital experience in their condo living as they experience in all other areas of their life. So the very notion that an owner should need to use a proxy – whether electronic or paper – to give someone else the right to cast their vote in this day and age of the internet must seem like a quaint holdover from the Victorian era.

Putting proxies in the past

It's easy to see why electronic voting is now the norm in over half the states in the U.S. and spreading rapidly. It's also easy to see why some states, like Arizona and Florida, have passed legislation which prohibits proxy voting, and other states are in the process of doing the same (more on that in a moment).

Condominium owners are not the only ones who love electronic voting. High-performing condo directors, boards, and managers who are motivated by the best interests of their unit owners also love it. Electronic voting dramatically increases unit owner participation, frequently, up to levels of 90 per cent or more. Unit owners engage in the voting process and express their opinion because it's easy to do. Just one "click" and they've voted. Boards have clear mandates as a result.

The increased participation also ensures that quorum is easily obtained weeks, and at least days, in advance of a meeting. Electronic voting translates into owner participation, which itself translates into accountability. High-performing condo directors, boards, and managers welcome this kind of accountability as it means affirmation and recognition of a job well done. It's only poor performers, or those taking advantage of their position for personal gain or conducting themselves inappropriately, who fear the loss of control that occurs when electronic voting makes proxies irrelevant.

Looking stateside

It's worthwhile to look south of our border at Arizona, Florida, and the US experience, where electronic voting is steadily leading to the extinction of the proxy. Arizona, the sunny retirement state with one of the highest densities of condominiums in the US, prohibits proxy voting after the

developer's control of the condominium has ended (which is to say, for most of the condominium's life).

Similarly, Florida, another high-density condominium state, prohibits proxy voting for the election of directors. Illinois provides that once a condominium adopts electronic voting rules and regulations, proxy voting is no longer allowed for board elections. Lastly, New Jersey recently allowed condos to use electronic voting and, at the same time, passed a law that prohibits condos from offering proxies to owners unless they also allow owners to cast absentee ballots, effectively rendering proxies meaningless.

Why are these states passing laws to prohibit or severely curtail the use of proxies? The answer is simple: experience has shown that proxies may entrench incumbent directors to the detriment of the condominium. It concentrates power and decision-making in the hands of a few, resulting in low director turnover, minimal accountability, and conflicts of interest that favour the few at the expense of the many. The danger lurking in proxies is such that US states are now discussing whether the ban on proxies should be extended from the election of directors to include votes of any type the condominium conducts. There's a reason proxies have been banned in political elections in most advanced democracies; that is, if the goal is to ensure the integrity of the electoral process, allowing someone else to vote on your behalf makes no sense.

Canadian perspective

Canadians have historically been slow adopters. That's not a bad thing. We are cautious by nature, we encourage consultation, and we seek consensus – all of which takes time. In the case of electronic voting, its widespread acceptance is inevitable, and for all the right reasons. It's a matter of "when" not "if".

Those seeking to resist the tides of change and hang on to the antiquated and inherently flawed system of proxy voting, whether by electronic or paper means, may have their own self-interested reasons for doing so. At some point, however, they'll be forced to concede that electronic voting is both the present and the future, and in the best interests of the unit owners they serve.

*Denise Lash is the founder and principal of Lash Condo Law (**www.lashcondolaw.com**).*

Better Late Than Never

by Doug Shanks and Michel Caza

The "Clean" Certificate

A purpose of the Condominium Act, 1998, S.O. 1998, c.19 (the "Act") is to protect consumers. In order to protect prospective purchasers or mortgagees, a status certificate ("Certificate") provides details of important issues when contemplating the purchase of a condominium unit ("Unit") such as common expenses or anticipated increases, reserve fund status, anticipated special assessments and any potential litigation involving the condominium corporation ("Condo Corp").

A "clean" Certificate indicates that there are no issues with the Unit and assists in marketing. A "clean" Certificate also assures the prospective purchasers or mortgagees that there are no violations of any existing rules governing the Unit.

Section 76(6) of the Act states that once a Certificate is issued, the Condo Corp is bound by its contents to the person who requested it. However, the Act does not address when inaccurate Certificates are issued or what happens when such inaccuracies are later discovered.

Inaccurate Certificates

The recent Ontario Court of Appeal decision in Metropolitan Toronto Condominium Corporation No. 723 v. Reino, 2018 ONCA 223 ("Reino") highlights the importance of issuing accurate Certificates despite previously issued inaccurate Certificates.

The main issue on appeal in Reino was whether a previously issued "clean" Certificate barred the Metropolitan Toronto Condominium Corporation No. 723 ("MTCC") from issuing future Certificates with notes of noncompliance for alterations to a Unit completed prior to previously issued "clean" Certificates.

In Reino, an owner ("Owner") purchased a unit, which at the time had a "clean" Certificate from an owner who also purchased the Unit with a "clean" Certificate. The Owner attempted to sell his Unit but the Certificate noted a breach of MTCC's Declaration. The breach was related to alterations made by another prior owner, which were not approved by

MTCC's board, which was a requirement of the Declaration. The Certificate noted that the Unit would need to be restored to its original layout and resulting costs would be included in the Units common expenses.

The Owner argued that since the Unit had been inspected by MTCC representatives on a number of occasions prior to the two previous "clean" Certificates, the MTCC was required to issue another "clean" Certificate.

The Court of Appeal did not agree with the Owner, and stated:

"...the condominium corporation is bound vis-a-vis the respondent Mr. Reino [the Owner] by the clean certificate it provided him when he acquired the unit from his mother in 2013. That said, it does not follow that the condominium

corporation is thereafter estopped from issuing anything but a "clean certificate" in relation to a unit when it has previously provided a clean certificate." (emphasis added)
The Court also stated that if a Condo Corp becomes aware of an issue that must be disclosed under Section 76 of the Condominium Act after issuing a Certificate, it must include this information in the next Certificate.
Additionally, the Court noted that a Condo Corp is bound by a "clean" Certificate and that an Owner's remedy for a negligently issued Certificate is damages for "any diminution in value of his unit by reason of any improper disclosure that may have occurred."

What to do?

When issuing a Certificate, it is the duty of the Condo Corp to ensure that the contents of the certificate are accurate. While not required by law, an inspection of a unit would mitigate potential liability resulting from negligently issued Certificates and it should be noted that the Court in Reino stated that "[T]he [Owner] has a remedy if the condominium corporation negligently issued the clean status certificate to him, to his detriment" and "... the condominium corporation [may be sued] for any diminution in the value of his unit by reason of an improper disclosure that may have occurred... '. Also, if a violation is discovered after a Certificate has been issued, the Condo Corp is required to note such violation on any subsequent Certificates.

In order to avoid liability, an option may be for the Condo Corp to include a disclaimer on the Certificate to the effect that the Unit has not been inspected, for violations or otherwise, and is subject to any issues that could arise. This may protect the Condo Corp, in raising a flag that an inspection could be warranted. Such disclaimer may mitigate liability from inaccurately issued Certificates, when looked at with hindsight after an inspection has been done.

For further information on status certificates, condominium law or the purchase or sale of a condominium, please contact Cheadles LLP at **www.cheadles.com**

Doug Shanks is a business lawyer and senior partner in Thunder Bay at Cheadles LLP who practices condominium law in Ontario. He advises condominium boards and owners of their rights and obligations under laws affecting condominiums and their owners.

Michel Caza is a law student at Cheadles LLP from Lakehead University Bora Laskin Faculty of Law and was instrumental in preparing this article.

This article is provided for legal information only and is not legal advice. Legal advice should be obtained with respect to specific fact situations.

cheadles
lawyers & trademark agents LLP

2021

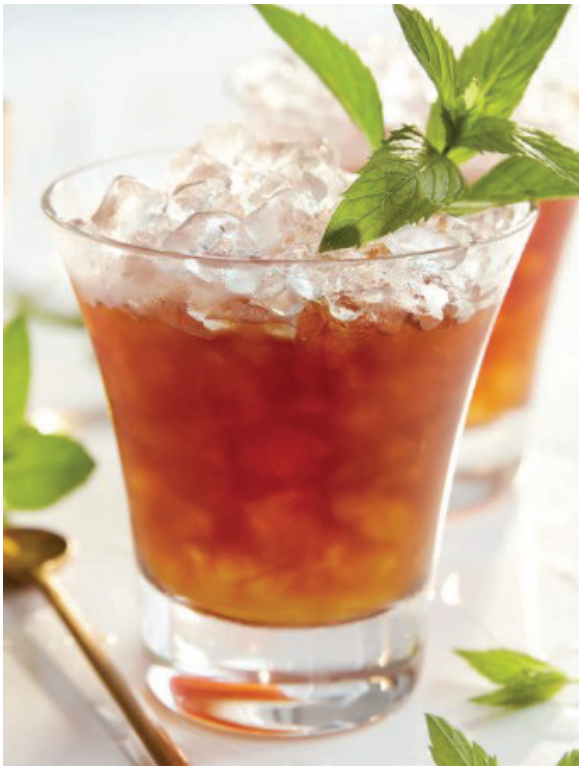
Seminar

SAVE THE DATE

April 17, 2021

Topic: Director's Duties & Responsibilities

More info to come in our next newsletter!



FOOD&DRINK

Deck The Halls

Holiday 2020

BY: CHRISTINE SISMONDO

This lightly sweet, super-fresh mint-chocolate coffee Julep is a show-stopper of a drink.

1 oz Junction 56 Mint Smoothie
1 oz Canadian whisky
1 oz cold brew coffee
2 dashes Angostura bitters
Crushed ice and mint sprigs (for garnish)

1. Add all liquid ingredients to a mixing glass with ice and stir for 20 seconds. Pour into a large coffee mug or cocktail glass filled with crushed ice. Top with crushed ice and garnish with mint sprigs.

Makes 1 drink

Proclamation of Amendments to the Condominium Act, 1998

Respecting the Condo Guide

The Ministry of Government and Consumer Services has recently announced that certain legislative amendments to the Condominium Act, 1998 (Condo Act) related to a condominium guide (condo guide) will come into force on January 1, 2021.

The legislative changes under the Condo Act can be viewed here:

https://www.ontario.ca/laws/statute/98c19#BK1
under sections 1(1), 71.1, 72(1), 72(2), 73(1), 73(2), and 161(1).

Once they are in force, the legislative amendments will, among other things,

- Require the Minister of Government and Consumer Services (Minister) to ensure that a condominium guide (condo guide) is prepared that sets out certain information, such as information related to condo purchasing and condo ownership, as the Minister considers appropriate.
- Give the Minister the authority to require the Condominium Authority of Ontario (CAO) to prepare the condo guide, subject to the Minister's approval,
- Require declarants (developers) to deliver a copy of the applicable condo guide to purchasers of preconstruction/ new condos along with the currently required disclosure statement,
- Provide that an agreement of purchase and sale entered by a developer or a person acting on behalf of or for the benefit of the developer is not binding on the purchaser until the developer has delivered a copy of the condo guide to the purchaser (in addition to the currently required disclosure statement), and
- Enable a purchaser who receives a copy of the condo guide (as well as the currently required disclosure statement) from the developer to rescind the agreement of purchase and sale before accepting a deed to the unit in certain circumstances.

As previously stated, the above amendments to the Condo Act will come into force on January 1, 2021.

The CAO will be responsible for preparing the condo guide, which is intended for purchasers of pre-construction/new residential condo properties. The ministry has been working closely with the CAO to ensure that this condo guide will be available to the sector by late fall 2020 to give stakeholders, including condo developers, time to familiarize themselves with the guide and related requirements, before it is required to be provided to purchasers beginning on January 1, 2021.

Bringing these amendments into force is intended to help address a lack of plain-language information available to purchasers of residential pre-construction/ new condos. The proposed condo guide is expected to better equip prospective purchasers of residential condos with information on condo ownership and on the condo purchase process to assist their understanding of the risks involved in buying pre-construction condos.

In addition, the condo guide may be of interest to anyone buying, owning or living in a condo as the guide will cover a wide range of topics (e.g., common expense fees, board governance) relevant to purchasing and owning property in a condo. However, developers would be required, under the Condo Act, to provide this condo guide only to purchasers of residential pre-construction/new condos.

General inquires on the proposed condo guide, and its preparation, can be directed to the CAO:
https://www.condoauthorityontario.ca/

The Ministry would like to share this message with as many Ontario condo sector stakeholders as possible and you are thus encouraged to share this notice with relevant contacts in your network.

Court Declares Condo Owner a Vexatious Litigant

April 24, 2018
by Denise Lash

In a recent case, Carleton Condominium Corporation 116 v. Sennek, the Court of Appeal for Ontario agreed with a lower court's decision that declared a condo unit owner to be a vexatious litigant.

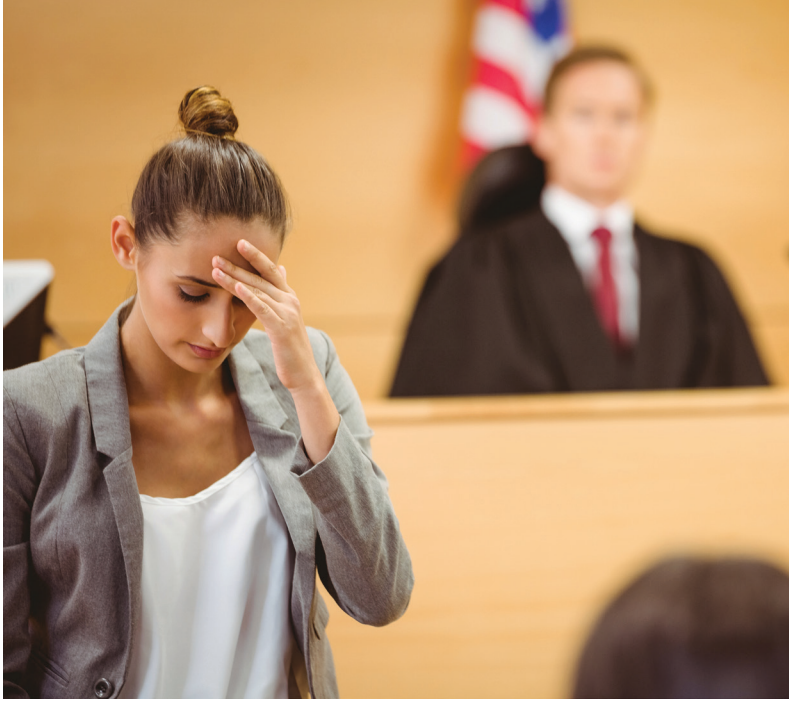
The lower court had concluded that the owner had six of the seven characteristics of a vexatious litigant:

- bringing one or more actions to determine an issue that has already been determined by a court of law;
- bringing an action that could not possibly succeed or would lead to no possible good;
- bringing an action for an improper purpose, including harassment and oppression of other parties, rather than for the purpose of an assertion of legitimate rights;
- rolling forward grounds and issues into subsequent actions, and often suing lawyers who acted for or against the litigant in previous actions;
- looking at the whole history of the matter and not just the original cause of action, the proceedings are vexatious;
- persistently pursuing unsuccessful appeals;
- failing to pay the costs of unsuccessful proceedings.

The court ordered that the owner was prohibited from initiating or continuing any action, application, motion or proceeding against the corporation, its employees, board members, property manager and solicitors without obtaining leave from a judge.

The dispute between the owner and the corporation started in Small Claims Court over three relatively minor issues: the pruning or non-pruning of a tree whose branches hung over the owner's unit; the size of the owner's parking space; and a flowerbox installed by the owner that was removed by the corporation as it did not comply with the corporation's rules, which ultimately led to the corporation registering a lien in the amount of $763 against the owner's unit to recover the costs of removing the flowerbox.

As stated by the lower court, "the Litigation spun wildly out of control almost from the outset". Ultimately the



corporation expended in excess of $100,000 in legal fees and disbursements to deal with the litigation involving the owner.

The Courts have held that the power to declare someone a vexatious litigant must be "exercised sparingly and with the greatest care." Seeking such an order is usually a last resort for a condominium corporation after other efforts to curtail the ongoing litigation have failed. When a condo corporation finds itself dealing with a difficult owner that persists in engaging in numerous unmeritorious and repetitive legal proceedings, not only is this very costly from a financial perspective, but these actions are extremely time-consuming for both the board of directors and the property manager who could make better use of their time and energy attending to the corporation's business.

In this case the owner was ordered to pay the corporation costs in the amount of $109,925, of which $85,016 was to be added to the owner's common expenses and recoverable under the lien against her unit. The owner was also required to pay an additional $2000 in costs for the unsuccessful appeal. By requiring the unit owner to pay costs to the condominium corporation this provides protection to the other unit owners in the condominium from "the financial burden they would otherwise shoulder when a condominium corporation takes steps to enforce compliance" with the condominium documents.

SYNERGY
PROPERTY MANAGEMENT SOLUTIONS

Synergy Property Management Solutions: A balanced combination of industry experience and progressive innovation

We know that experience is best paired with education. We strive to keep abreast of new legislation and changes. We promote transparency and honesty.

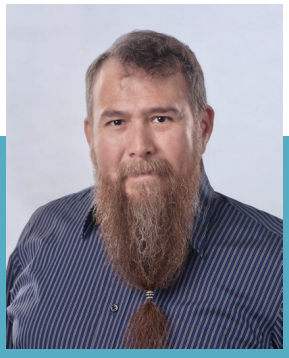
Now accepting new properties!

- Fully licensed (CMRAO)
- Experienced
- Educated
- Professional
- Accountable
- Organized

Synergy is Management at its Best!

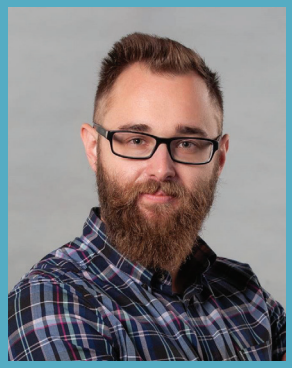
Teri MacNeil
Owner/President

Sue Duncan
Manager,
Condos & Non-Profits



John Janssen
Owner,
Maintenance Manager

Sara Wrigley
Administration Coordinator



Kirdy Taniwa
Property Manager

Yvonne Norton
Bookkeeping

Benoit Kuziora
Accountant (CPA)

Mary-Anne Zimmer
Leasing, Admin support

Call us today at 807-620-8999
synergypropertymanagement.ca

Synergy Property Management features a Full Complement of Maintenance Staff with years of industry knowledge and experience.

Condos Face Crisis in Property Management

December 3, 2019
by Armand Conant

Addressing the talent crunch

In the past few years, we have all seen the growing shortage of condominium property managers. And as mentioned at the October 5th session of the annual Condominium Conference, many believe we are already at the crisis stage. But how did this shortage arise? Will it get better or worse?

There are several reasons this has arisen, all of which have come to a head at the same time.

By the numbers

Ontario has more than 11,700 condominium corporations. While a good number are self-managed – which, of course, is a very acceptable way of managing a building – most are managed by professional management.

That said, there are currently about 2,500 licensed managers, 1,500 of which are General Licensees, and an estimated 300 of these which are in upper management and do not manage specific buildings. This then means that there are only about 1,200 General Licensees for thousands of existing corporations. And with more condos coming on stream at a fast pace – the talent crunch is only intensifying.

Industry barriers

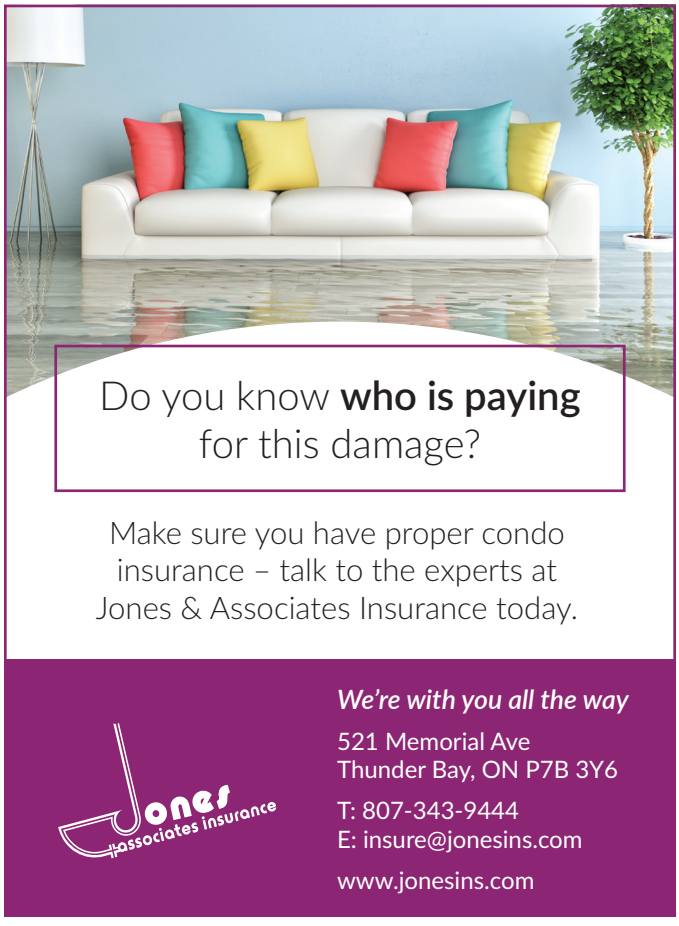
Historically, experienced managers have not been considered "professionals" when, in fact, they have provided high quality, experienced, professional management services. In other words, they often were not given the respect they deserved.

After pushing hard by the industry, the Condominium Management Services Act came into force on November 1, 2017, mandating the licensing of condominium property managers. At the same time, the Condominium Management Regulatory Authority of Ontario (CMRAO) was created to deal with all aspects of the licensing, training, governance, and discipline of property managers.

As a result of these initiatives, all condominium property managers, or anyone who derives income from providing management services, must be licensed. Someone new to the industry would be a "Limited Licensee," and once the four mandatory courses have been completed and the manager acquired two years of experience, they would become a General Licensee.

Seasoned managers who did not have the required educational courses as of November 1, 2017, became "Transitional General Licensees" and are required to complete the courses by June 30, 2021. Those who do not, become Limited Licensees who are supervised by a General Licensee. Because of this, it's not uncommon for managers to not take these courses and retire from the industry.

Lastly, managers must now pay an annual licensing fee. Although some management companies pay the licensing fee for their managers, many managers pay it themselves. As a result of this fee and the required courses, the general view in the industry is that there probably will be many Transitional General Licensees who will not renew their



licence once the transitional period has expired, resulting in a further reduction in the number of experienced managers.

A matter of compensation

Although condo property management can (and should) be a rewarding career, it is stressful. Managers are always on the front lines and dealing with day-to-day problems and, in the writer's view, salaries have historically not been commensurate with the work involved.

This is not to criticize condominium boards of directors or management companies. No doubt, boards are under enormous pressure from their owners to keep common expenses as low as possible; and in this sense, owner expectations can sometimes be unreasonable.

Consequently, in fulfilling their duties, boards work hard to keep the corporation's costs as low as reasonably possible. This can result in professional services being forced to be too low. And while condo boards rightfully expect the best quality management services, sometimes the demand is for a General Licensee when their building could be managed by a Limited Licensee (under the supervision of a General Licensee). This expectation adds pressure on finding experienced General Licensees.

Sometimes, the situation above can be self-defeating in the sense that driving the costs artificially low or demanding a higher level of management (and thus costs) means that a corporation may have difficulty obtaining an experienced, qualified manager. This is another contributing factor to the shortage of managers.

Same job, more work

To complicate matters, the workload of managers has increased significantly with the reforms to the Condominium Act, 1998 (November 1, 2017). And, in many cases, there was not a reciprocating increase in management fees. These new duties include revised procedures for calling annual general meetings, the Periodic Information Certificate, Information Certificate Update, filing requirements with the Condominium Authority of Ontario (CAO), and more. Some new management contracts reflect the increased workload and, in many cases, the board works with management to ensure they are adequately compensated. However, in other cases, they do not.

As a result, despite significant work by community colleges and the Association of Condominium Managers of Ontario (ACMO) to encourage people to join the industry, there has not been a noticeable increase of people becoming managers.

An aging field

Adding to the issue is the fact that the industry is somewhat weighted in the older manager category. This means there are managers who are retiring and many who soon will be doing the same, including Transitional Licensees. Therefore, the supply of managers is reducing at both ends of the cycle.

As a result of all these forces and the shortage of qualified managers, manager poaching between companies is on the rise. While the movement of people to different companies is normal in every industry, the issue has become particularly acute in this industry given the current shortage. Anecdotally, the author has heard that there are also significant signing bonuses and other incentives being offered to entice experienced managers to change companies.

LCPS
chartered professional accountants
professional corporation

Pat Charlebois, CPA, CA
Allan Prenger, CPA, CA
Tracey Greer, CPA, CGA
John Luft, CPA, CA
Michael Speer, CPA, CA
Bert Watts, CPA, CA
Derek Tycholas, CPA, CGA

- Accounting
- Auditing
- Personal and Corporate Taxation
- Business Advisory Services

1070 LITHIUM DRIVE,
THUNDER BAY, ON P7B 6G3
Phone: (807) 623-0600
Fax: (807) 623-0400
email: info@lcpsca.com

Filling the property management talent pool

We know this problem is here and that it is growing. So what can be done to reduce and eventually avert this problem? Here are some preliminary suggestions:

- Educate the condo industry of the need for qualified, licensed managers (recognizing that there will always be self-managed corporations), their role in protecting the building, enhancing the market value of units, and in helping in improving the condominium community.
- Improve public awareness and promote the fact that property managers are, indeed, professionals.
- Educate unit owners that managers and management companies are to be properly compensated (and some of their costs covered, such as licensing fees), which will attract people to the industry. Owners have to remember that you get what you pay for.
- Find additional ways to entice people to join the industry, such as younger people looking to start a career or those thinking of changing their career.
- Find ways to slow down the retirement or withdrawal from the industry.

The property management talent shortage will grow, and the problem will become more acute. It is not all doom and gloom, however, but rather an urgent wake-up call. With a concerted effort by all of us in the industry, we will weather this storm and become an even stronger and more vibrant industry making for healthier condominium communities.

Armand Conant is a partner and head of the condominium law group at Shibley Righton LLP. He is past-president of the Canadian Condominium Institute (CCI), Toronto chapter, and chairman of the joint committee that prepared the legislative brief to the Ontario government regarding suggested amendments to the Condominium Act.

Canada: Mould In Condo Unit: Who's Responsible?

July 12, 2019
by Brian Sunohara

The case of Brasseur v. York Condominium Corporation No. 50, 2019 ONSC 4043, outlines the respective responsibilities of a condominium corporation and a unit owner.

Duty to Maintain and Repair

Condominium corporations have a duty to maintain and repair the common elements. On the other hand, the declarations of most condominium corporations require unit owners to maintain their own units and to repair and deal with any issue that creates an unsafe condition to the occupants, property, and assets of the corporation.

The dispute in question involved a significant mould problem in a unit which first arose in 2009 and was only remediated in 2018.

The unit owner argued that the mould was caused by issues related to the common elements, such as problems with the exterior windows, the heating system within the common elements ceiling, and the ventilation systems.

The condominium corporation argued that the mould was caused by lifestyle choices made by the unit owner, such as not properly operating the heating system and installing weather stripping on the entry door which prevented adequate ventilation.

After reviewing competing expert reports, Justice Nakatsuru found in favour of the unit owner. He held that the mould was caused by reasons related to the design of the building. He found that the condominium corporation breached its obligation to repair and maintain the common elements. As a result, the condominium corporation was found responsible for the cost of the mould remediation.

Oppression Remedy

The unit owner also argued that she should be entitled to compensation under the oppression remedy in section 135 of the Condominium Act, 1998. Justice Nakatsuru denied

this relief.

To be successful in an oppression remedy, it must be shown that the condominium corporation engaged in oppression, unfair prejudice, or unfair disregard of a relevant interest.

Justice Nakatsuru noted that oppressive conduct is conduct that is coercive, harsh, harmful, or an abuse of power. Unfairly prejudicial conduct is conduct that adversely affects the claimant and treats him or her unfairly or inequitably from others similarly situated.

Unfair disregard means to ignore or treat the interests of the complainant as being of no importance.

Although Justice Nakatsuru found that the condominium corporation's overall approach to the mould problem was not reasonable, he said that there were mitigating circumstances. The condominium corporation needed time to investigate the problem. It retained and hired experts and contractors. It met with the unit owner. It ultimately remediated the mould albeit on a without prejudice basis.

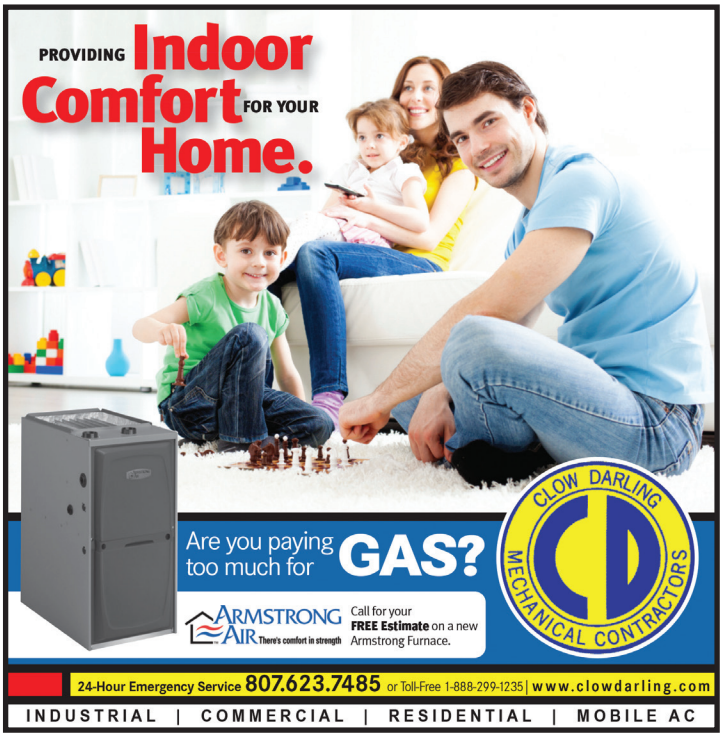
Justice Nakatsuru stated that the condominium corporation did not have to immediately accept the most comprehensive and expensive option to remediate. It was entitled to take a more graduated, cost-conscious, and adequately effective option to solve the problem.

He further noted that mould and its reoccurrence can be a complex issue. The reasons for it are multi-faceted and not easy to sort out. The gravity of the situation may not have been immediately appreciated. Moreover, experts and contractors are not always immediately available.

Conclusion

A condominium corporation has obligations to the unit owners. It must maintain and repair the common elements. It must conduct reasonable investigations into problems.
However, perfection is not expected of a condominium corporation. A unit owner cannot always expect a condominium corporation to immediately fix a problem, especially where the issue is complex. Time may be required to conduct investigations and to develop a cost-conscious and effective plan of action.

A condominium corporation's breach of its duty to repair does not necessarily mean that a unit owner is entitled to compensation under the oppression remedy. The oppression remedy is reserved for harsh and burdensome conduct. The intent of the oppression remedy is to balance the interests of those claiming rights from the condominium corporation against the ability of management to conduct business in an efficient manner.
The oppression remedy protects legitimate expectations and not individual wish lists.
The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.



What to Do When Condo Owners Send Insulting and Harassing Emails?

May 2, 2017
by Rod Escayola

Condo owners are often the first to notice when something needs the attention of the board or management. Whether it'd be a burned light bulb or a squeaky door. Emails facilitate these service call requests. But what is a corporation to do when the volume and content of an owner's communications is such that it constitutes harassment? In a recent case, courts have shown that they will not tolerate insulting or harassing emails.

Facts of the case

A Toronto condo corporation was faced with an owner who emailed management virtually every day asking for corporate records, critiquing the effectiveness of management and complaining about building maintenance. The problem was not only the volume and frequency (after all, she was often reporting issues, which required to be attended to). The problem was also the content of these emails. When reporting issues, this owner regularly resorted to abusing staff (verbally and by email) and engaged in insults, body shaming, naming calling and other type of coarse language and rudeness.

Over the years, the corporation tried to be patient and tried developing a protocol with this owner to limit her communications to email correspondence. They asked her to refrain from coming to the office and verbally abusing them. Unfortunately, this proved to be insufficient. Office staff would come to their place of employment, day after day, to find a barrage of inappropriate communications. Over time, these communications amounted to directed and ongoing harassment.

The corporation brought the matter to court, seeking an order preventing this owner from continuing with that type of behaviour.

Decision

The court relied on section 117 of the Condominium Act, which prohibits anyone from carrying on an activity in a unit or in the common elements which is likely to damage property or cause injury to an individual. The phrase "injury to an individual" has been interpreted to include psychological harm.

The court also pointed to the fact that the corporation's own rule prevented individuals from immoral, improper, offensive or unlawful use of a unit or of the condominium property.

Finally, since the communications were directed at staff of the corporation, the court relied on the Occupational Health and Safety Act as the owner's behavior constituted workplace harassment. Workplace harassment is defined as "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome". Condo corporations are under a statutory obligation to investigate and protect its workers from workplace harassment and to remedy the situation by implementing and enforcing appropriate anti-harassment policies.

In the circumstances of this case, the court concluded that the communications from this owner were antisocial, degrading and harassing. For this reason, the court ordered her to cease and desist from abusing, harassing, threatening or intimidating (verbally or in writing) employees or representatives of the corporation. The court also imposed $15,000 in legal costs. Unfortunately, as is often the case, this is insufficient to cover the corporation's legal costs. The other owners will have to assume the balance.

Lessons learned

It is important to note that the corporation was not seeking to "silence" an owner. Owners should be able to report issues and voice their dissatisfaction or complaints. Corporations, directors and management do not, however, have to endure insult, harassment, defamatory or inappropriate communications. Corporations, in fact, have a duty to investigate and protect its workers from workplace harassment.
When faced with inappropriate communications from owners or occupants, it is best to attempt to defuse them as early as possible. If possible, it is often a good idea to attempt to defuse them in person rather than through emails. Emails are impersonal and their tone is often difficult to read. When that fails, the corporation should make it clear that it will not tolerate or even respond to inappropriate communications. If that fails, a corporation should consider escalating the matter to its legal counsel. The corporation should not allow inappropriate, invasive or harassing behavior to continue. Unfortunately, it is difficult to ask someone to "play nice" if they don't have it in them. Perhaps the $15,000 costs award will help.

CCI-NWO - 2020 - 2021 Membership List

CCI-NWO has 42 condominium memberships representing a total of 1711 units.

Condo #	Name	# of Units
1	The Carriage House	22
2	Varsity Square	48
3	Guildwood Park	70
4	Guildwood Park	40
5	Waverley Park Towers	151
6	Guildwood Park	40
7	McVicar Estates	54
8	Glengowan Place	54
9	Parkwest Meadows I & II	54
10	Maplecrest Tower	98
12	Parkwest Meadows III	50
13	Victoria Park	35
14	Parkview Condo	17
15	Boulevard Park Place	72
16	Leland Court	13
17	Signature Court	36
18	Parkwest Manor 1	31
19	Harbourview Terrace I	67
20	King Arthur Suites	36
22	Parkwest Manor II	31
25	Harbourview Terrace II	35
26	Brookside Place	24
28	Banting Place	48
29	Brookside Manor	48
31	Fanshaw Place	36
33	Marina Park Place	29
38	Hilldale Gardens	38
39	Silver Harbour Estates	29
40	Foxborough Greens	26
41	Pinecrest Manor	32
42	Fanshaw Place II	30
48	Mariday Suites	32
50	Lakeview Suites	24
51	Superior Lofts	16
52	Allure Building	51
54	Terravista Townhomes	18
55	Terravista Condos	30
56	Aurora Building	48
58	Hillcrest Neighbour Village	19
60	Hillcrest Neighbour Village II	15
61	Fountain Hill	24
KCC #		
10	Islandview	40

MEMBERS - CATEGORIES

LEGAL

Cheadles	622-6821
Rene Larson	622-2777
Christopher Jaglowitz	416-363-2614

ACCOUNTING

LCPS Professional Corporation	623-0600

FINANCIAL INSTITUTIONS

Copperfin Credit Union	877-202-5722

CONSTRUCTION / CLEANING / SECURITY

Carpet Crusader	251-9313
Clow Darling Mech. Contractors	623-7485
North-West Electric	345-7475
Paul Davis (Thunder Bay)	344-7566
Winmar	623-8855
Apex Security	344-8491
Architecture 49 Inc.	625-6700
DRD Construction Services	623-4540
First General – Thunder Bay	623-1276
National Service Professionals	623-4000
Superior Property Maintenance	629-6400

PROPERTY MANAGEMENT / REAL ESTATE

Mirabelli Real Estate Corp.	346-5690
Synergy Property Mgmt, Inc.	620-8999
The Property Managers NWO	630-3098
ReMax First Choice Realty	344-5700

INSURANCE

Gillons* Insurance	345-3611
J.D. Barnes	622-6277
Jones & Associates Insurance	343-9444
Aon Reed Stenhouse Inc.	346-7450

COMMUNICATIONS / PRINTING

Print Pros Plus Inc.	622-4007

NEWSLETTER DISCLAIMER
Reviewed and confirmed by Communications Committee March, 2016

This publication is designed to provide informative material of interest to its readers. It is distributed with the understanding that it does not constitute legal or other professional advice. The views of the authors expressed in any articles are not necessarily the views of the Canadian Condominium Institute and neither CCI nor any other party will assume liability for loss or damage as a result if reliance on this material. Appropriate legal or other professional advice or other expert professional assistance should be sought from a competent professional. Advertisements are paid advertising and do not imply endorsement of or any liability whatsoever on the part of CCI with respect to any product, service, or statement. Permission to reprint is hereby granted provided: 1. Notice is given by phone or in writing; 2. Proper credit is given as follows: Reprinted from (Insert name of publication). Copyright by Canadian Condominium Institute.

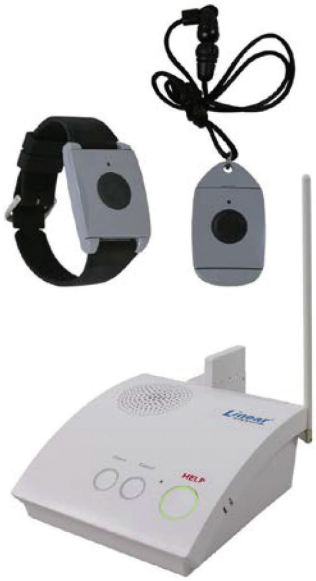
Personal **Medical** Alarm

Everything you need for **safer**, independent living with **peace of mind** for yourself and your family.

Standard Package

- 2 way voice communication.
- Available with wrist or pendant button.
- 24 hour local service.

$24.95/month
+ $49 installation fee



Premium Package

- 2 way voice communication.
- Small automatic and complex automatic fall detection pendant.
- 24 hour local service.

$34.95/month
+ $49 installation fee

Lock box rental for $50. Keep your key **safe** and **accessible.**

Do you already have a medical alarm? Transfer to APEX and upgrade to a new automatic fall detection system. Take advantage of our "no installation fee" and we guarantee your monthly payments will be less.

Call Matt or John today at (807) 683-9868.

Call **344-8491** for more information • **www.apex-tb.com**