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Magazine Theme

This issue will delve into proactive strategies and tactics for dealing with ever increasing levels of abuse and harassment experienced by condominium managers and directors, and what can be done practically and legally to address the problem and provide adequate security and protection for your community.

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Volume 45, No. 2 Summer 2024

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Fall 2024

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ABSTRACT DEADLINE: JULY 5, 2024

EDITORIAL DEADLINE: JULY 26, 2024

ADS DEADLINE: AUGUST 9, 2024

Canada Post Publication Agreement Number 40011809

Contents



Publisher

ASSOCIATION OF CONDOMINIUM
MANAGERS OF ONTARIO

Editor

STAF CAMPBELL

Production/Layout

MARACLE INC.

Advertising

ADS@ACMO.ORG

Prepress/Printing

MARACLE INC.



Advertising rates are available at:
www.acmo.org
Other communications should be sent to:

The Editor
CM Condominium Manager
c/o ACMO
2121 Argentinia Rd., Suite 101
Mississauga, Ontario L5N 2X4
Tel: 905-826-6890/1-800-265-3263
Fax: 905-607-6172
Email: editor@acmo.org
Web: www.acmo.org
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CM Condominium Manager is published by



Association of Condominium Managers
of Ontario

Core Values

ACMO is committed to the recognition, promotion and support of Professional Condominium Managers across Ontario, through education, member services, public awareness and a strict adherence to the highest ethical standards.

CM Condominium Manager magazine is the flagship quarterly publication of the Association of Condominium Managers of Ontario (ACMO) and for more than 30 years has served as the leading source of in-depth coverage of industry news, issues, information, education and best practices for condominium management professionals and service providers.

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**Message
from the**

President

Dear Managers,

Welcome to this pivotal issue of *CM* magazine. Today, we delve into a topic that touches the core of our community: harassment within condominiums.



Harassment, in any form, is a deeply unsettling violation of personal safety and community harmony. In our living and working spaces—places where we deserve peace and security—the impact of such behaviour can resonate profoundly, disrupting lives and undermining the sense of security that everyone deserves at work or at home.

As you all know, this issue reached a boiling point in December of 2022 with the mass shooting in Vaughan. A terrible tragedy that should not have taken place, but sadly, will likely take place again if nothing changes. And while the Vaughan shooting was the most extreme example, it is hardly the only one. External stressors affecting all of us are giving rise to more mental health problems, and this in turn means more pressure on condominium managers.

Harassment can take on many forms, from verbal abuse to intimidation, from slander to libel, and from threats to outright physical abuse. Despite most buildings having workplace harassment policies, many managers may choose to ignore harassment for fear of making matters worse. For managers in larger buildings, it can be intimidating calling the police on someone who knows exactly where to find you, and for those without an on-site office there may be fear of other forms of retaliation, including threats to your job.

At ACMO, in conjunction with CCI and CAI, we have been ramping up our efforts to lobby the government for laws enabling safer workspaces and stricter penalties for offenders. But the issue is more complicated than simply passing new laws. It requires training for managers, support from management firms and boards of directors, physical changes to buildings, and new forms of policing and monitoring.

We have a collective responsibility to cultivate communities where respect, kindness, and safety are not just ideals, but realities. This discussion is a step toward empowering each one of us to take action, be vigilant, and support one another.

Thank you for engaging with this crucial topic. May the stories and information shared here inspire change and reinforce our commitment to ensuring our condominiums are not just places to live and work, but places where we all thrive together in harmony. ■

Warm regards,

A handwritten signature in black ink, appearing to read 'Eric Plant'.

Eric Plant, RCM
ACMO President



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Snapshot



A quick glance at what's happening with ACMO and the condominium industry.

ACMO Welcomes the 2024-2025 Board of Directors

ACMO would like to extend thanks and a warm welcome to the Board of Directors as approved by the members at the AGM held on April 19, 2024, and to the association Officers appointed at the first meeting of the new board later that same day:

*Eric Plant,
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*Juliet Atha,
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*Catherine Murdock,
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Only RCMs Allowed!

This fall, ACMO will be introducing exclusive programming that is only available to active ACMO members who hold the RCM designation. Plans are underway to offer an “RCM-Only” webinar, Advanced Certificate Course, and extra educational session at one of our in-person luncheons. In addition, we will begin developing resource materials exclusively for RCMs. This ‘RCM-Only’ initiative is part of our long-term strategy to build additional value and differentiation into the prestigious Registered Condominium Manager (RCM) designation.

Lobbying to Enact Un-proclaimed Changes to the Condo Act

For 2024, ACMO’s Government Relations Committee will be focusing on lobbying the government of Ontario to enact various proposed and un-proclaimed changes to the Condo Act. The committee will be focusing on amendments that are most relevant and important from a condominium management perspective, including Section 135 re Corporation Initiated Evictions, Section 83.1 re the Annual Budget, Section 83.3 re Keeping Unit Tenant Records, Section 84 re Chargebacks, Section 98 re Clarity on



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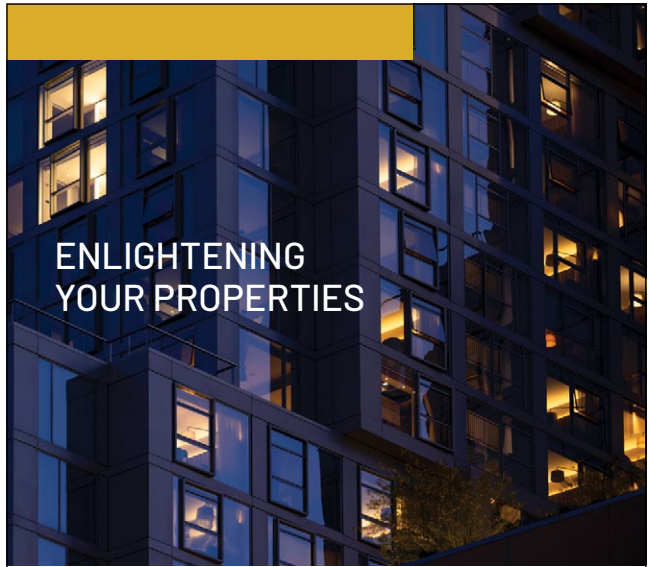
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Maintenance and Repair and Section 21.1 re Share Agreements. Members are encouraged to visit ACMO's advocacy webpage regularly for updates on our advocacy efforts.

Advocating For Improved Safety & Security in Condominiums

Last year, in response to the 2022 mass shooting in Vaughan and escalating harassment and violence in condominiums, ACMO together with the Toronto & Area Chapter of CCI and the Canadian chapter of CAI formed several working committees develop resources and advocate for legislative change to improve safety and security in condominiums. To date, a series of five letters have been

sent to various government agencies recommending specific changes to the Condo Act, Ontario Health & Safety Act, Criminal Code and Building Code, with more recommendations on the way. The proposed changes are designed to afford better protections and safety for condominium directors, officers, managers, and workers.

NEW Advanced Certificate Courses Under Development

2024 is proving to be our most successful year in terms of offering *Advanced Certificate Courses*, ACMO's best-of-class, online continuing education courses for condominium managers offered free to members. In March, ACMO offered our popular

Communication & Conflict Management course followed by two new courses: *Building Structure* in April, and *Managing New Builds & Tarion* in June. We also ran a repeat of the existing *Technology & Security* course in June. A number of new courses are currently under development covering a range topics including *Reserve Fund Planning*, *Condominium Finance*, *Employment Law*, and *HVAC & Mechanical*, all of which should be completed this fall. ACMO leads the way in the provision of high-quality continuing education for managers with each of our certificate courses qualifying for 5 Continuing Professional Education (CPE) points towards the renewal of a General License.

Welcome New ACMO Members!

ACMO extends a warm welcome to our newest members who have chosen to elevate their careers or businesses by joining our professional community.

New RCM's

<i>Ashley Bloomfield</i>	<i>Arian Beshad</i>
<i>Andre Gorham</i>	<i>Sidrit Malevi</i>
<i>Lee Jordan Boros</i>	<i>Kristen Skinner</i>
<i>LinTao Zhang</i>	<i>Kelment Lleshanaku</i>
<i>Dawn Ramanauskas</i>	<i>Marcello Galeota</i>
<i>Mahdi (Matt) Kabiri</i>	<i>Rajan Gautam</i>
<i>Ramish Mazhar</i>	<i>Adriana Zeka</i>
<i>Ingrida Kulikauskaite</i>	<i>Vicky Amos</i>
<i>Ljiljana Niketic</i>	<i>Polly Horvay</i>
<i>Julia Newbury</i>	<i>Ervin Tare</i>
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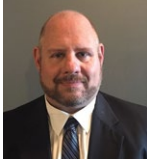
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Scott Hill, CPP, PSP
Director,
3D Security and Response Services

Verbal Judo in Condominiums

Using Time-Tested De-escalation Techniques to Calm the Waters

When discussing de-escalation techniques, one of the most famous concepts is that of Verbal Judo. Police, Security, and many other organizations use it in over 140 countries. The name comes from the martial art of Judo. Translated, JU means “gentle” and DO means “the way”. Therefore, the name means the “gentle way”. While the writer is not an expert in Judo techniques, it is commonly understood that the techniques are designed to use the opponent’s strength, weight, and force against them; never meeting the force head-on. It is this principle that allows verbal judo to work - when two parties “butt heads”, there is no way to resolve the issue without a fight and, just as in a fight, there is a winner and a loser. In verbal judo, the goal is to have two winners.

There are two core principles and five universal truths when discussing Verbal Judo. The first principle is that the goal

of Verbal Judo is to “Generate Voluntary Compliance.” This is accomplished by setting up the encounter so that both parties emerge with the sense of being heard. The other core principle is that people should concentrate on how we are the same, rather than how we are different.

We recognize how people are the same by implementing Verbal Judo’s Five Universal Truths:

1. Everyone wants to be treated with Dignity and Respect
2. Everyone wants to be asked rather than told.
3. Everyone wants to be told why they are being asked.
4. Everyone wants options rather than threats.
5. Everyone wants to be given a second chance.

Although it seems to be simple on the face of it, it goes without saying that people react better to manners than to

rudeness. By treating condominium owners and residents with dignity and respect, there is a much better chance that they will abide by the rules. This is an easy one, as most condominium managers do this every day without even thinking about it. Additionally, it is clearly outlined in Section 10 of ACMO’s Code of Ethics.

It may go without saying, that tone (be it written or verbal) has everything to do with successful communication. In Verbal Judo, we teach that the words are only 7-10% of the message (verbal interactions - AGM, Board Meetings, etc.), but non-verbal and voice make up the other 90%. In writing, specifically the primary correspondence, starting off the interaction with polite requests (ask), rather than spitting out orders, will go a long way to generating voluntary compliance. While it is often said that letters (now emails) have



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NO tone, it is well worth the extra 30 seconds to scan the e-mail and ensure that you are coming across (the first time anyway) as requesting compliance rather than demanding it.

there may come a time when a threat has to be invoked in order to generate compliance. While true, this should not be the first step of the correspondence, as it results in the recipient being backed into

our earlier message, and just want to follow up to ensure that you....” gives a resident a graceful way to comply.

What are the advantages of using Verbal Judo? There are many advantages to using Verbal Judo, even in your written communication. They include:

1. Enhanced professionalism for the condominium manager, the condominium management Company, and the Board of Directors
2. Decreased complaints against the above
3. Less stress for condominium managers and staff
4. Improved outcomes

Utilizing Verbal Judo in the condominium industry has many advantages, but at the end of the day, it saves the managers time and stress. Taking a few extra minutes before hitting SEND on that email and doing a quick scan to see if there is an opportunity to implement a universal truth or two is time well spent. In the long run, it will save both time and stress – the first of which condominium managers have a limited supply of, the second of which they have in abundance! ■

Scott Hill is the owner/director of 3D Security and Emergency Response Services. An RCM since 2013, Scott is proud to hold professional designations in both Condominium Operations and Security, holding both the PSP and CPP certifications with ASIS. 3dsecurityservices.com

when two parties “butt heads”, there is no way to resolve the issue without a fight and, just as in a fight, there is a winner and a loser. In verbal judo, the goal is to have two winners.

As it is, the goal of effective communication is to help condominium owners understand the rules as well as abide by them. When condominium residents are told the reason behind the rules and bylaws, they are much more likely to support them. As a premeditative measure, when condominium managers are writing e-mails or discussing the rules/bylaws, a good practice would be to include the reason behind the rule or bylaw. This helps residents understand the “why” as well as the “what” of the rules. We have all seen emails that run like “As per section XX of declaration, you must....”. This is not telling the resident “Why”; adding an extra sentence or two that outlines the wording of the rule, as well as why the condominium is writing this email, goes a long way to ensuring that the resident complies with the direction.

a corner, and they may react with hostility. When this occurs, the recipient is more focused on the threats than on the matter at hand. Including a line such as: “we would request that you action the following by {date}, or do you need time?” gives the recipient the option of complying with the directions or, at the very least, opening polite dialogue with management.

The last truth is that people want to be given a second chance. This advice is one that we feel would be supported by your condominium legal counsel. If someone does not immediately comply, one of the most destructive things to do would be to “drop the hammer”. As in the previous point, when this occurs, the lines are then drawn in the sand and issues get lost. The reason that issues get lost is because residents are once again focusing on reinforcing their position rather than addressing the issue at hand. Using a follow up with wording similar to “we understand that you may have missed

Everyone wants to be given options rather than threats - at least initially. Unfortunately, with non-compliance,



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Violence & Harassment

Criminal vs. Civil Remedies

A surprising array of legislation, condo rules and common law precedents can solve violence and harassment scenarios affecting managers, directors, workers and residents at your condo.

Threats of Violence & Harassment

Section 264 of Canada's Criminal Code prohibits threats of violence. No person may, without lawful authority, knowingly or recklessly engage in conduct that causes another person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them. Examples include repeatedly following another person, repeating rejected communications, besetting or watching a person's residence, workplace or other location, or engaging in any threatening conduct against a friend or family member, subject to imprisonment for up to 10 years. Other threatening crimes include

intimidation, criminal harassment, uttering threats or indecent and harassing telephone calls.

Crimes of Violence

Crimes of violence range from assault causing bodily harm, battery, sexual offences, rape, manslaughter and murder. They may occur during offences such as breaking and entering, being unlawfully in a dwelling-house or conversion (theft of another person's property). Criminal negligence causing death could sentence a guilty condo manager or director to huge unlimited fines and/or protracted imprisonment.

Mischief

A person who commits mischief willfully destroys or damages property, renders property dangerous, useless or inoperative, or obstructs, interrupts or interferes with any person's lawful use or enjoyment of property – a useful offence we have sometimes invoked. Related

crimes include causing a disturbance, trespass at night and vagrancy.

Preventing Continuance of a Crime

If you witness a breach of the peace, you are justified in interfering or detaining a person until police obtain custody, to prevent the continuance or renewal of a crime by using no more force than is reasonably necessary. Call your lawyer to discuss entry into a unit or investigations upon the common elements by a police officer and requirements for a warrant.

Strategies & Remedies

Some typical strategies are to instruct fighting parties to separate. Shout "STOP!" Tell them they are in breach of the corporation's Violence & Harassment Rule. They may be subject to prosecution for "Mischief" or other crimes. Video the circumstances and obtain independent witnesses' state-

ments. Ask the parties to return to their units. Call 911 if relevant. Speak to the harasser and victim once they've cooled down and ask them for their written statements. If a serious crime is committed, don't disturb the evidence pending a police investigation. Often the manager's demand letter citing any breached rule will resolve the matter, but if not, ask the parties to meet with the board who can undertake an impartial, judicial-style hearing to impose an appropriate solution. Often, the

corporation's lawyer is asked to write a compelling demand compliance letter, or to seek an urgent injunction, or an application to CAT, or a s. 132 mediation/arbitration, or a s. 134 or 135 Court Application. If an owner fails to maintain or repair the unit presenting a potential risk of personal injury to persons or damage to the property, s. 92 (3) of the Act allows the corporation to undertake necessary work and to back-charge the proven cost to the unit owner as a lienable common expense

(but carefully comply with the required chargeback criteria).

Recognizance

On various occasions our firm has obtained a recognizance (i.e., a peace bond or restraining order) or bail conditions applicable to a person who has harassed or threatened violence against an employee, manager or worker at the corporation's workplace. The accused can be required to attend regular mental therapy visits, consume prescribed medication, and stay 100 meters (or so) away from a harassed person and family's locations.

Risk Assessment

Managers and directors can be prosecuted if they fail to take every precaution reasonable in the circumstances for the protection of a worker in the corporation's workplace. The *Occupational Health and Safety Act* ("OHSA") defines "workplace harassment" and "workplace violence" affecting "workers" (including a condo manager, employees or personnel of a contractor) in the "workplace". Management must take reasonable precautions to protect a worker likely to be exposed to domestic violence in the workplace; they must also delicately warn workers exposed to working with a previously violent co-worker. The OHSA requires employers to conduct a Risk Assessment of potential workplace violence or harassment scenarios and to make appropriate changes to minimize such risks. Condos must establish a Violence & Harassment Policy and Procedures minimizing risks, subject to employee training. Section 26 of the Condo Act and the *Occupiers' Liability Act* provide that an "occupier" (i.e., a condo, its manager and directors) have a duty to take such care as is reasonable in all the circumstances to ensure that persons and any items brought on the common elements are reasonably safe.

OHSA Policy, Representative, WHMIS & Injuries

Strict liability prosecutions under the OHSA also apply to a condo's breach of the mandatory requirements to prepare an Occupational Health & Safety Policy, designate a Health & Safety Representative (or a Joint Health & Safety Committee if required) as well as compliance with the Workplace Hazardous Materials Information System (WHMIS) – or where

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a condo fails to notify the Ministry of Labour immediately of a workplace injury. Condos, their directors, officers and managers can be subject to individual fines of up to \$25,000 and 12 months imprisonment, or the condominium could face a fine of up to \$500,000. An automatic 25% Victim Impact Surcharge may be applicable. Any condo lacking those mandatory policies should promptly ask its lawyer to provide them. Various harmful environmental offences can also be subject to strict liability prosecutions under the *Environmental Protection Act*.

Human Rights Code & Policies

Ontario's Human Rights Code prohibits harassment in the workplace because of race, colour, ethnic origin, citizenship, creed, age, marital or family status, gender, sexual identification, disability and other grounds. Employees and residents have the right to freedom from harassment and sexual harassment in the workplace by the employer, its agents or employees, or by a landlord or other occupants of a building. Shockingly, many condominium corporations still lack a Human Rights Policy or a Harassment & Sexual Harassment Policy

protecting the board, and a Violence & Harassment Rule and Human Rights Rule protecting residents. Any such policy must carefully establish criteria for an impartial investigation and hearing process addressing fairly, discreetly and respectfully, while balancing the rights of the alleged harasser and victim. Serious or protracted personal harassment by an employee, employer or supervisor may qualify as due cause for dismissal or constructive dismissal entitling an employee to sue.

Harassment Remedies

Managers are aware that s. 117 of the Condo Act prohibits a condition or activity likely to damage the property or cause injury (including mental injury). A carefully drafted Violence & Harassment Rule can provide solutions to protect the condo's representatives and residents from a wide range of scenarios (best when supported by a Trespass Rule and a Privacy Rule). Internet harassment using social media will only rarely be enforced by a court when egregiously excessive false accusations or repeated harassment are proven. Modern s. 58-approved rules should require compliance with

legislation, other laws and case law and which prohibit bringing weapons or hazardous materials upon the common elements. "Harassment" does not exist as a common law tort remedy, but a Harassment Rule is enforceable, because of the statutory authorization provided by ss. 17 (3), 58, 119 and 117 of the Condo Act. Common law case precedents applicable to the separate tort of "nuisance" are often better enforced by a condo's Nuisance and other rules.

Protect Yourself

Managers and directors have justly been concerned about increased threats of violence and harassment and ACMO has been lobbying for appropriate protections, but they should keep in mind their reciprocal obligations to prepare OHSA and Human Rights policies, risk assessment and procedures to preclude harm to the corporation's personnel – including managers and directors. ■

J. Robert Gardiner, B.A., LL.B., ACCI, FCCI is the senior partner of Gardiner Miller Arnold LLP practicing condo law. ontariocondolaw.com



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Ahmed Alkaddour,
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DEL Property Management

Tackling Harassment in Condominiums: Protecting Managers & Directors

Living in a condominium building can offer a sense of community and security, but unfortunately, it is not immune to conflicts and harassment. Condominium managers and volunteer board directors often find themselves on the receiving end of abuse and harassment, making their roles even more challenging and sometimes unbearable. As these incidents continue to rise, it becomes imperative to address them effectively, and analyze them more in depth both practically and legally, to ensure the well-being of everyone involved.

Understanding the Issue

Harassment in condominiums can manifest in various forms, it ranges from a resentful demeaning look, verbal abuse, threats, intimidation, to tragic [yet mitigable] physical violence. Managers and board members may face hostility from unit owners, their tenants or guests involved in condominium affairs. Such behavior not only takes away from the

luxurious experience of condominium living but also adversely affects the performance of the site staff and the effectiveness of board members in the long run.

In fact, harassment has latent risks that will lead to a profound impact on site staff. Take for example psychological distress, anxiety/depression, increased absenteeism, loss of talent, and deterioration of relationships; all of which can hinder effective communication and detract from the essence of living in condo communities.

The Root Cause

Before recommending some useful tips on how to deal with harassment, it is crucial to first understand the possible root cause behind this behaviour. Let me illustrate the concept with the following equation:

A Problem or Concern + Unresolved for Extended Time + Lack of Communication = Potential Harassment

While certainly there are other factors that play a role in committing the act of

harassment, such as the abuser's susceptibility and their psychological traits, the three inputs on the left side of the equation are the ones that we, condominium managers, can control. By eliminating any one element of the inputs, chances are high we can avoid harassment.

Strategies for Preventing Harassment Before it Happens

Listen and Sympathize: It is not uncommon that most residents and owners only want to vent their frustration out to someone in the community. You would be surprised how many concerns cease to exist only by lending your ears [and heart] to the speaker. It is important here to validate the person's feelings and read between the lines to get their perspective, even if you disagree with them, your empathy will establish trust and a sense of respect.

Stay Calm and Deescalate: I acknowledge it is not the easiest, but I assure you it comes with practice. Maintaining

A close-up photograph of a man in a grey suit, light blue shirt, and striped tie. He is holding a bright red rectangular sign with both hands. The sign has the words "ZERO" and "TOLERANCE" printed in large, white, bold, sans-serif capital letters, one above the other. The background is slightly blurred, focusing attention on the sign and the man's hands.

**ZERO
TOLERANCE**

a calm and composed demeanor can significantly influence the tone of the interaction and help prevent the situation from getting out of control.

Use Non-Confrontational Language: Choose your words carefully and avoid

came from the complainer, they are more likely to accept and adopt it.

Reach Out for Help: Do not be frustrated if you were not able to resolve the matter on your own; while one hand can clap, two hands clap louder. Reach

disputes amicably and restore harmony within the community.

Strategies for Dealing with Harassment After the Fact

Documentation x3: When faced with harassment, managers should document every incident thoroughly. This includes noting the date, time, location, witnesses, and all other details of what transpired. Keeping records of emails, messages, and any communication relevant to the harassment can serve as crucial evidence when legal action becomes necessary.

Set Boundaries: It is essential to establish clear boundaries and expectations regarding acceptable behavior within the condominium community. Make sure you work with your boards and legal team to draft a workplace violence and harassment policy; circulate this frequently to all residents and post it in common elements, such as the mail room, for all to see. Consider placing a sign that harassment will not be tolerated. Communicating these standards through community newsletters or blast announcements can help deter harassers and promote a culture of respect and civility.

It is essential to establish clear boundaries and expectations regarding acceptable behavior within the condominium community.

language that may provoke or escalate the conflict further. Use neutral language to communicate your points effectively and respectfully and make sure you educate involved parties about the matter and investigate the possibility of providing accommodation.

Shift Focus to Solutions: Move the focus of the conversation towards finding mutually agreeable solutions to the underlying issues or concerns. Collaboratively brainstorming solutions can help promote a sense of ownership over the resolution process. If the solution

out to your circle whether a colleague, board member, or even senior management team to help you discover different approaches.

Engage in Conflict Resolution: Addressing conflicts and grievances in a timely and constructive manner can prevent escalation into harassment. Implementing conflict resolution mechanisms, such as mediation or arbitration, or simply inviting the complainer to a circular table with representatives from board members can help reach common ground. This allows parties to resolve

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Seek Support: Condominium managers and directors should not navigate through stressful harassment alone. Seeking support from fellow board members or legal professionals can provide guidance and solidarity during challenging times. Additionally, involving human resources or legal counsel within the management company or through the condominium corporations can offer valuable insights and assistance.

Prioritize Safety: The safety and well-being of managers, directors, and residents should always be a top priority. Implementing security measures such as surveillance cameras, access control systems, security patrols, radios, silent panic buttons and alternative exits can all help reduce the severity of harassment.

Utilize Legal Recourse and Representation: When harassment escalates to a point where informal strategies prove ineffective, pursuing legal recourse is necessary. Familiarizing oneself with the corporation's regulations and policies can provide guidance on the appropriate course of action. Also, with the help of Section 117. (1) of the *Condominium Act*, corporations' lawyers may be able to request that the harasser(s)

limit their communication with staff to emails, and only in case of an emergency.

Engaging the services of qualified firms experienced in condominium law can provide invaluable support and representation. Legal professionals can assess the situation, advise on the best course of action, and advocate for the rights and interests of managers and directors.

File Complaints: If the harassment is serious, filing formal complaints with relevant authorities such as the police may be necessary. Providing evidence and documentation of the harassment strengthens the case and increases the likelihood of a successful resolution.

Consider Restraining Orders: In cases of severe harassment or threats of violence, obtaining a restraining order against the perpetrator may be necessary to ensure personal safety and security. Restraining orders legally prohibit the harasser from contacting or approaching the victim, providing some layer of protection against further harm.

Conclusion

Harassment in condominiums poses significant challenges for managers,

staff, and volunteer board members, affecting their well-being and ability to fulfill their duties effectively. By employing strategies such as setting boundaries, de-escalation, documentation and seeking support, individuals can mitigate the impact of harassment and foster a respectful and inclusive community environment. Additionally, understanding legal options and seeking appropriate legal recourse, when necessary, can provide essential protection and accountability. Ultimately, addressing harassment requires a collective effort from all stakeholders to uphold the principles of fairness, respect, and dignity within the condominium community. ■

Ahmed Alkaddour has a bachelor's degree in civil engineering and is a Certified Associate in Project Management from PMI. Ahmed also holds a Project Management Certificate from Toronto Metropolitan University and has been providing insights to boards and guiding them through the management of their properties for four years. Delpropertymanagement.com



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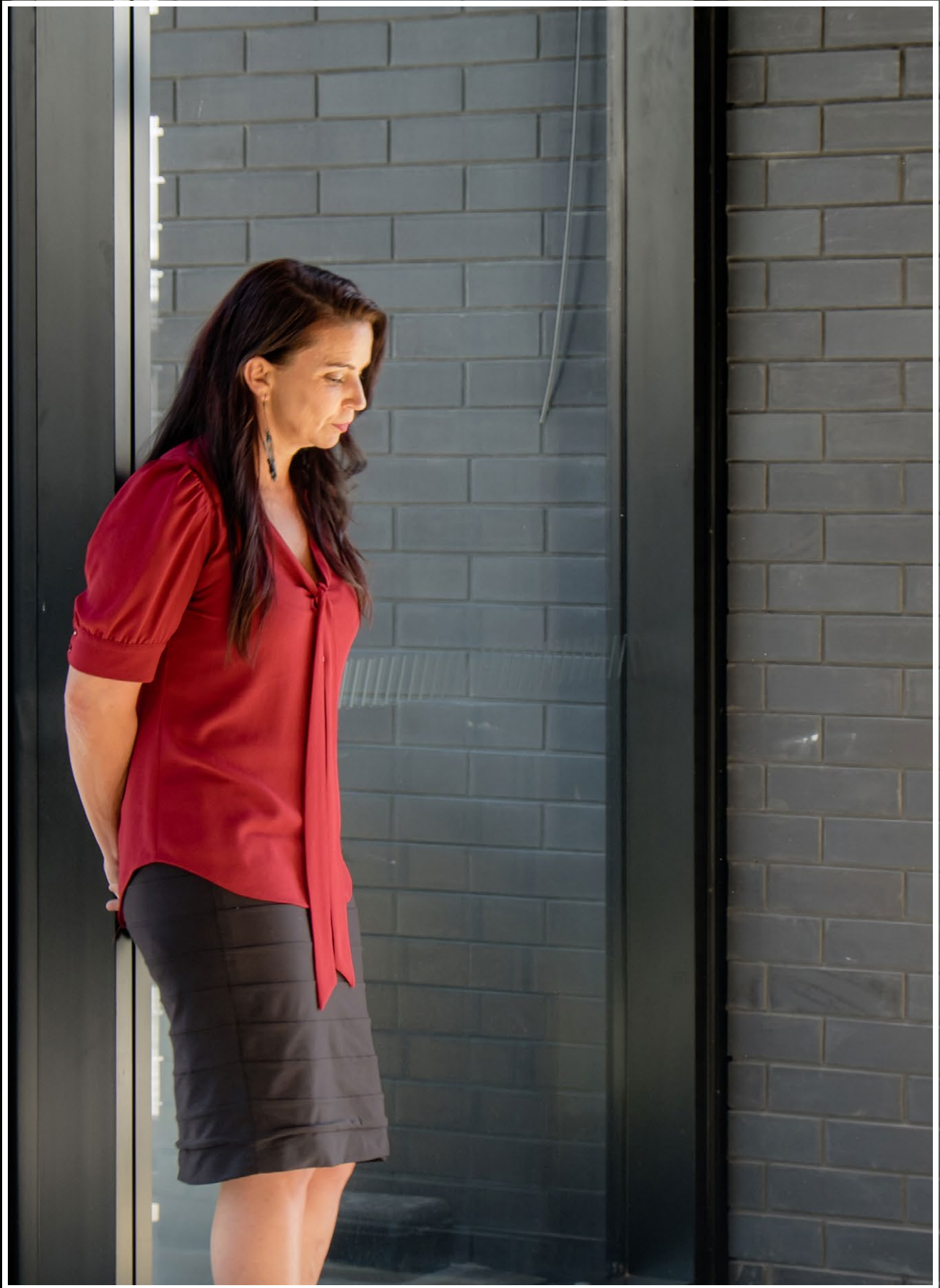


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Courtney Cartmill, RCM, OLCM,
President & Principal Manager,
Culture Property Management Inc.

Safe Spaces: Addressing Harassment in Condos

In recent years, the issue of harassment in condominiums has been on the rise, causing distress among residents and disrupting the peaceful coexistence within these communities. From noise disturbances to verbal abuse, the tactics employed in such confrontations can vary widely, leading to a negative impact on the well-being of individuals and the overall atmosphere of the condominium corporation. To combat this concerning trend, it is imperative for property managers and condo corporations to take proactive measures in implementing clear policies and procedures to address and prevent harassment in these shared living spaces.

Harassment in condominiums not only affects the individuals directly involved but also casts a shadow over the entire community, creating an environment of fear and discomfort. The first step in effectively tackling this

issue is the establishment of robust policies that outline what constitutes harassment and provide guidelines on reporting and handling complaints. Clear communication of these policies to all residents is crucial to ensure that everyone is aware of their rights and responsibilities in maintaining a safe and respectful living environment.

Prompt identification and intervention in cases of harassment are paramount to prevent escalation and further harm to the victims. Property managers and condo corporations must take all complaints seriously and conduct thorough investigations to address the root cause of the issue. By demonstrating a commitment to upholding zero tolerance towards harassment, these entities can set the tone for a community that prioritizes the well-being and safety of its residents.

Supporting victims of harassment is equally important in fostering a

culture of empathy and solidarity within the condo corporation. Providing victims with access to resources, support services, and counseling can help them navigate through the emotional impact of harassment and empower them to seek justice. Collaboration with legal experts and local authorities is vital in taking appropriate action against perpetrators and holding them accountable for their actions.

In addition to reactive measures, proactive steps must be taken to prevent harassment from occurring in the first place. Education and awareness-raising campaigns on the detrimental effects of harassment and the importance of fostering a culture of respect and understanding can help in creating a community where such behaviours are not tolerated. Conflict resolution workshops and training sessions can equip residents with the skills to

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handle disputes in a constructive and peaceful manner, thereby reducing the likelihood of conflicts escalating into harassment situations.

Open communication channels within the condo community are

By taking a proactive stance against harassment and promoting a culture of respect and inclusivity, condo communities can create a safe and welcoming environment for all residents. Through collaborative efforts

minium management services to South Western Ontario. Courtney started as a Condominium Manager in the Waterloo and Brant Region(s) while achieving her Registered Condominium Manager (RCM) Designation with the Association of Condominium Managers of Ontario (ACMO). Courtney then relocated to Wentworth and Niagara regions as a Condominium Manager and is now actively managing in London Middlesex, Oxford County and Brant Regions. Courtney has 16+ years experience which ranges from high-rise, commercial, townhouse and vacant land corporations as well as rental, real estate and project management. Courtney has served as a member & chair for several of the Canadian Condominium Institution (CCI) committees (actively on the CCI - London Chapter: Education Committee & CCI - National: Events Committee) . As well as actively writing articles for industry related media. Courtney is an active mentor for new Property Managers and truly loves being involved in the industry and expanding her wealth of knowledge for Condominiums. culturemanagement.ca

Collaboration with legal experts and local authorities is vital in taking appropriate action against perpetrators and holding them accountable for their actions.

essential for residents to feel heard and supported in addressing their concerns. Encouraging dialogue and feedback mechanisms can help in identifying potential issues early on and addressing them before they escalate. Regular community meetings, newsletters, and online forums can be used to disseminate information on harassment prevention and resolution strategies, fostering a sense of collective responsibility in maintaining a harmonious living environment.

between property managers, condo corporations / boards, residents, legal experts, and local authorities, strides can be made in addressing and preventing harassment in condominiums. Let us strive towards building condo communities where every resident & manager feels valued, respected, and safe. ■

Courtney Cartmill is the Owner & Principal Manager of Culture Property Management Inc. providing condo-



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Anthony Spadafora, B.A., J.D.
Associate Lawyer,
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A Practical Guide to Workplace Violence and Harassment in Condominiums

As condominium lawyers, our office has observed a noticeable increase in incidents of workplace violence and harassment affecting condominium managers, staff, and volunteer directors. Now, more than ever, condominium managers must be prepared to deal with incidents of violence and harassment, and to ensure that adequate policies are in place, and that staff have received adequate training to be able to respond appropriately and safely.

Condominium buildings present a unique challenge in terms of workplace safety because the risk of harm often arises from a resident or other lawful occupant of the building. This means that normal security measures that were designed to focus on external risks (stopping unauthorized people from entering the building) must be adapted to deal with internal risks. In simple terms, this might necessitate


that managers keep their office door closed and locked.

In this article, we will review two relatively recent court cases involving incidents of workplace violence and harassment within condominiums: (1) *York Condominium Corp No 163 v Robinson* (“Robinson”); and (2) *Toronto Standard Condominium Corp. No. 2581 v. Paterno* (“Paterno”). We will then discuss key practical takeaways from these cases that managers and boards can apply to their own condominium properties.

In *Robinson*, a resident made excessive demands for information and complained incessantly about the condominium’s operations. Within these communications, the resident would frequently use offensive and abusive language. The resident attempted to justify her behaviour by arguing that she was entitled to

complain and to notify management about legitimate maintenance issues in the building, and that even though her complaints were rudely worded, the substance of her complaints was nonetheless valid. The Court found that even though the communications contained relevant information about the property from time to time, the conduct was still harassing and psychologically harmful. Accordingly, the resident was ordered to cease her harassing communications and to ensure that all future correspondence was courteous and civil. The *Robinson* case confirms that repeated incidents of degrading verbal or written communications to members of a condominium corporation’s management team amounts to workplace harassment, and should not be tolerated, even if the underlying substance of the complaints has a kernel of legitimacy.






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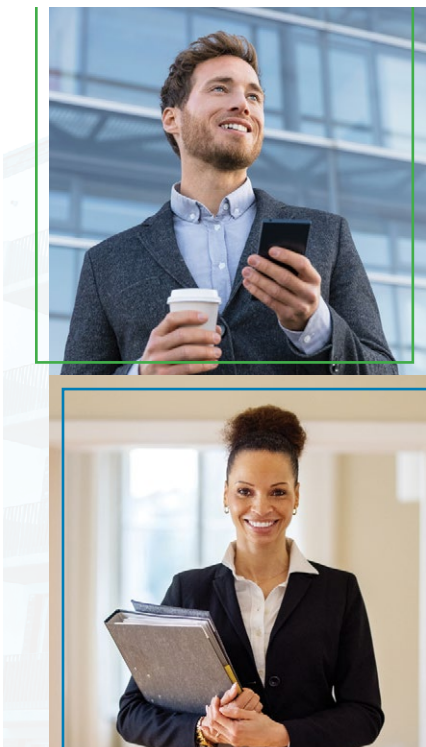
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In Paterno, a resident engaged in serious misconduct, including explicit emails, lewd gestures, and threats of physical violence towards condominium staff. The Court provided the resident with a “last chance” to correct the behaviour and ordered that the resident’s unit be seized and sold if the harmful behaviour persisted. Paterno confirms that threats of violence constitute a form of workplace violence, and will be met with serious consequences, which may include the forced sale of a condominium unit and the permanent removal of the resident from the condominium property.

A key takeaway from these cases is that condominium corporations have a legal obligation under the *Occupational Health and Safety Act* and the *Condominium Act, 1998* to take all reasonable steps, up to and including commencing legal proceedings, to protect managers, staff, and volunteer directors from workplace violence and harassment.

The *Occupational Health and Safety Act* also places a duty on condominium workplaces to have adequate policies and to investigate and address incidents of workplace violence and harassment. Investigations should include timely interviews with the victim of the alleged harassment, and any witnesses to the incident. All such interviews should be documented in writing and the police called in instances of physical violence or credible threats of physical violence. Legal counsel should then be retained to advise as to legal enforcement steps and to communicate with the alleged aggressor.

Implementing a written workplace violence and harassment policy that is

distributed to all residents of the condominium and the condominium’s staff is strongly recommended, as it has a dual purpose. Not only do such policies provide a framework for responding to these incidents, they also serve as a warning and deterrent to potential aggressors that abusive conduct will have serious consequences.

An effective written policy will:

- provide clear and concise definitions of workplace violence and harassment so that the concepts remain familiar to the condominium corporation’s staff, residents, and other stakeholders.
- outline a step-by-step process for reporting, documenting, and investigating incidents of workplace violence and harassment to ensure that potential incidents are properly recorded and addressed.
- clearly set out the legal consequences of acting in a violent or harassing manner to deter such behaviour.

In addition to reviewing your written policies, managers and boards of directors should consider conducting a regular security review in the building. These reviews may be delegated to a qualified security consultant and would include (among other things) assessing the physical premises for internal risks. By way of example, a security review might identify areas where additional security cameras are needed, such as ensuring adequate coverage in and around the management office, as well as access control such as ensuring that internal locks and alarms are in good working order.

In conclusion, a workplace violence and harassment plan for condominium buildings includes the following practical elements:

1. A written policy to deter and provide a step-by-step guide for responding to incidents of workplace violence and harassment, as well as guidelines for what constitutes actionable violence or harassment.
2. Regular building security reviews to assess the physical premises, including access control and adequate surveillance.
3. Regular security reviews ensuring that staff are adequately warned about internal risks such as residents who are known to be harassing or aggressive, as well as external risks such as potential visitors or other dangerous activities.
4. Effective use of legal counsel to investigate and prosecute incidents of violence and harassment on the condominium property.

Being prepared for potential issues streamlines the tough decision-making and conversations that may be required if a harassment incident arises. We hope that these practical steps can outline what is necessary to protect all potential parties involved. ■

Anthony Spadafora was admitted to the Law Society of Ontario in 2023 and received his J.D. from Queen’s University in 2022. Anthony practices primarily in the areas of condominium law and civil litigation and is currently establishing a practice of providing efficient and effective legal representation to all clients. lddclawyers.com



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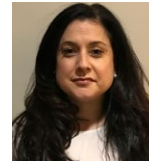


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Protective Measures:

Directors & Officers Insurance Crucial in Protecting Condo Boards Against Harassment and Abusive Behaviour

It was a crime that shattered the peaceful mood of the city of Vaughan, just north of Toronto, days before Christmas 2022. Five people were murdered by a gunman who was then shot and killed by police.

The victims were residents of the same condo and casualties of a long-simmering dispute dating back to 2010 by an owner of one of the condos. Three of the fatalities were members of the condo's board and victims of a dispute that had spanned 12 years.

While this case provides an example of harassment that had tragic consequences, and thankfully is not typical, it underlines the seriousness and scope of harassment that faces directors on the boards of condominiums. In this article, we'll focus on harassment aimed at board members and the steps that can be taken to protect them including

a comprehensive Directors and Officers (D&O) liability insurance plan. This coverage is important as directors and officers can be held personally responsible under the law and their own bylaws for the work they do in the governance of their corporations.

Understanding Directors & Officers (D&O) Insurance

A typical Directors and Officers (D&O) insurance program is made up of three elements or insuring agreements referred to as Side A, Side B and Side C. Side A covers directors and officers for claims that the organization is either unable or refuses to pay. In this coverage, the individual is the person who's insured, and they could be at risk to pay any fines or penalties. Side B provides coverage to the company for legal costs avoiding any

risk to its assets. Side C is known as entity coverage since it covers the corporation itself. It is important that the corporation review their D&O coverage with their insurance broker to ensure they are covered for the many types of issues that may arise. Since condos are specialized organizations distinct from other types of bodies it is best that the strata work with an insurance company that has experience in this field.

How Does a Claim Proceed?

If a legal action is commenced against a corporation, it's a question of informing the broker and providing details of the allegation. Once it is determined that a claim is covered (which will be detailed in the policy) the corporation's defence costs are covered, and any penalties paid for in

the event that the corporation loses its case. Legal costs are typically significant, and even if there was no actual harassment that took place, the board member being accused of the harassment could be liable for the costs of defending them. These costs are typically covered as part of the claim. As we live in an increasingly litigious age and with the escalation of disputes — even in the smallest of organizations — it is advisable to have adequate D&O coverage to avoid costly claims.

In the event of a covered claim, the insurer provides coverage for the legal costs associated with a defence or negotiation of settlement. In many cases, the settlement amount itself may also be covered. This is dependent on what the settlement covers. In a condo, it's extremely important that the D&O policy includes coverage for the property manager as well. Since the manager is not a director or officer of the condo, there needs to be language in the policy specifically

including them. In such a case, they would have the same benefits as the board members.

D&O and Legal Expense Coverage

Coverage for all legal matters is dependent on the scope and type of allegations being made. The D&O and Legal Expense policies cover specific events and are both subject to any exclusions that may apply. Typically, the two policies do not respond to the same events, however there are many cases where the notice of claim will include allegations that trigger coverage under both policies. In this event, the insurers would determine if one would take full control and cover, or if there would be a joint loss between the two. This would be dependent on the language of the policies. The best action in this case is to report to both insurers and let them sort out the best option.

Should the Board Settle the Claim?

A common opinion that we hear from some boards that are reluctant to go to court goes like this: "It's only \$5,000, so let's just pay them and move on since the defence will cost us \$20,000." Our recommendation is to challenge the claim. Why? Our concern is that others may hear how easy it was to get that \$5,000 and it will open the gates to more frivolous lawsuits to get a quick payout. Standing firm and defending the action is important in these cases to prevent subsequent claims later.

What Type of Exposure do Members Face?

As the people responsible for the rules and regulations of the community within the condo, the board may be challenged on a variety of fronts. It could be that a resident alleges a breach of fiduciary duty when it comes to managing the property or, perhaps, they may be in violation of a particular policy. Some conflicts arise around upgrades to units or parking disputes. As a result, board members often become the brunt of harassment.

The courts are full of cases that detail disputes that range from harassment such as rude and inappropriate emails to open threats and



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even assault, aimed at board members. Emails can often contain hostile, racist, homophobic, and otherwise degrading language. There are examples of people threatening individuals who run to sit on the condo board and any that support their candidacy. In some cases, harassment can take the form of social media posts or endless emails to the board demanding some type of action.

Mitigating and Preparing to Deal with Harassment

D&O insurance is really the first arrow in the quiver when it comes to dealing with harassment issues. However, condo boards also need to make special provision that they have a robust zero-tolerance policy in place to prevent sexual harassment. This is important as people need to feel safe in their homes and policies need to be in place to avoid unease among employees, residents, tenants, visitors, and board members. Having a clearly stated, anti-sexual harassment policy in place that is posted publicly will help prevent incidents from taking place and delin-

ate action should such harassment occur. The policy needs to be kept up to date and provided to residents, board members and others.

Preparation is the Key to Avoiding Problems

Human relations and interpersonal relationships can be very complex at times. This is especially true where many people live near each other and have conflicting needs and demands. In the same way that condo corporations conduct regular maintenance to ensure the health of the building, it is important that the board take necessary actions to protect their community by having strong policies and good governance, along with appropriate insurance in place to maintain their well-being. ■

Tony Esposito, Vice-President Real Estate Claims at BFL CANADA, leads a national team of claims specialists with a focus on claims advocacy and risk management for multi-unit residential and commercial buildings. Prior to joining BFL CANADA, he worked as a

claims adjuster for a national insurance company and with an independent adjusting firm working on claims of varying size and complexity.

Sandy Fantino R.I.B. (Ont.) is a Vice President, Client Executive for the BFL CANADA Realty Division with over 12 years of insurance industry experience. Her focus is finding the best insurance solutions for condominium corporations and along with her team, she prides herself on professionalism and service to her clients.

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Understanding & Addressing Harassment

You just took over as the new condominium manager at a condominium corporation and you are scrolling through its governing documents. You notice that last year they passed a harassment rule. Your first thought in this instance might be: why was there a need to pass a harassment rule? Was the former property manager harassed by an owner? A tenant? A board member?

One definition of harassment is: *to create an unpleasant or hostile situation especially by uninvited and unwelcome verbal or physical conduct* (Mirriam-Webster).

Condominium managers invest time, effort, and passion in the corporation as an ongoing part of their management duties. Even with the best of intentions, inevitably, they encounter individuals at a condominium who can act in ways that make the

environment “unpleasant or hostile,” for the manager. Such cases need to be identified and addressed promptly in the best interest of the condominium manager and their ability to perform their duties effectively.

The condominium manager will want to examine a case of harassment towards them by first assessing their own behaviour during interactions and determining the context of the interaction in which they were harassed, and finally, gauging the severity of the harassment incident to determine the appropriate avenue for remedy.

Assessing One’s Own Behaviour

It would be safe to say that a negative aura displayed by a condominium manager might attract a similarly negative response from owners, tenants, and board members. Thus, it is important that the manager

assesses their attitude daily while communicating with individuals at a condominium corporation. Self-awareness is vital to a condominium manager understanding their role in why a scenario played out the way they did. While nobody should be blamed for being harassed, if the condominium manager’s behavior was inappropriate in the first place, it should not be overlooked.

Was it indeed harassment or was somebody simply reacting negatively to a negative person? A defining point of effective condominium managers is ability to correctly identify the way they come across to others, and adjust their demeanor accordingly, as needed.

Examining the Context of an Interaction

An initial starting point is to examine whether this harassment came from





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interacting with someone whom the condominium manager should not have been involved.

As an example, consider a tenant who has left miscellaneous items on the common elements outside their unit. The manager sends multiple e-mail requests to the unit owner to have these items removed, asking for this not to happen again or the items will be removed by the maintenance staff with a chargeback issued to the owner. During a subsequent inspection of the property, the manager notices that the tenant has not complied with removing the items. The manager takes matters into their own hands, by knocking on the door and speaking with the tenant directly. The tenant answers the door, and a conversation quickly turns into a heated display by the tenant, mainly due to a lack of condominium-related knowledge on their part. Nonetheless, the tenant feels justified and proceeds to break the condominium manager's personal boundaries, shouting profanities, ending by calling them "the worst manager out there."

The tenant's behaviour in this scenario seems to fall under the definition of harassment. It may even warrant a harassment rule being passed and put into effect. However, in this example, the condominium manager was not the landlord (unit owner) and therefore, it was inappropriate for them to be initiating direct communication with the tenant about a condominium matter where the unit owner might end up receiving a chargeback. This in turn fostered negative, harassment-ridden communications.

Inevitably, there will be something that happens to every condominium manager at some point which could potentially fall into the harassment definition. Another quality of an effective condominium manager is the ability to minimize exposure to negative situations and outcomes. This goes together with having a thorough knowledge of the *Condominium Act, 1998*, along with each specific corporation's governing documents and each specific management contract. Strictly adhering to these items fortifies the manager, and usually minimizes negative outcomes.

Gauge the Nature of Harassment and Act Accordingly

If harassment, for whatever reason, involves the law being broken (physical assault, sexual harassment, etc.) the police must be called. Even if the law has not been broken, immediately informing upper management at the condominium management services provider of the offending situation is vital. A well-run management company will have no tolerance for their employees being harassed. If it's not a board member displaying the harassment, the board of directors of the condo corporation may need to be informed as well, to ensure they are up to date on issues inside their corporation. A well-run board will also support their condominium manager and not tolerate them being harassed.

To put a harassment rule in place, engaging the corporation's lawyer may be warranted as a follow up action, with the board's approval. On a larger scale, if harassment persists at a corporation, the condominium management services provider may even consider weighing the value of the management contract, because continuing work in an ongoing a hostile environment with no avail surely comes with its own set of costs.

Conclusion

Unfortunately, nowadays for some condominium managers, harassment can be a nearly daily occurrence. Thankfully there are avenues as noted, to address these issues as they arise. Managers can make their life easiest by continuing to refine their communication and interpersonal skills. This in turn allows them to deliver their best self, a product which will be best received by condominium stakeholders. ■

Harrison Sloan, BA, OLCM, manages a portfolio of commercial/industrial condominium corporations for Argo Property Management Ltd. Since entering the industry in 2021, he has continuously exercised his belief that bringing a pursuit of excellence to work every day is fundamental to being the best condominium manager one can be.
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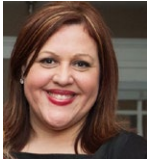
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Condo Clashes

One Committee’s Push for Legal Reform

Once considered safe havens, Ontario condominiums have over the last few years witnessed a surge in violence and harassment, transforming once peaceful communities into places of unexpected conflict.

We are all familiar with the most infamous incident. In December 2022, a condominium dispute in Vaughan, Ontario culminated in gun violence, death and injury. The assailant was an owner of one of the units in the condominium. He had been engaged in a lengthy legal dispute with the condominium corporation regarding alleged noise and radiation coming from an electrical room. What started out as a civil proceeding eventually became dangerous as the Board of Directors struggled to deal with the owner’s erratic and aggressive behaviour.

Tragically, the owner killed five residents of the condominium, and seriously injured another, before he himself was shot dead by police. Three of the residents killed by the assailant were members of the condominium’s Board of Directors.

The Problem

Condominium corporations (directors, officers, managers and staff) are statutorily mandated to deal with disputes (mainly with owners) which almost every condominium community encounters. These disputes are sometimes extremely emotional and complex, which can become particularly challenging when there are mental health or anger-management issues involved.

Many condominium corporations are grappling with such disputes; struggling to find answers to very challenging problems. By and large they are doing a marvelous job, assisted by strong and effective dispute resolution mechanisms that are available under Ontario law.

However, the shooting in Vaughan shockingly demonstrates the risks of harassment and violence that can sometimes accompany these disputes.

Collaborative Safety and Security Committee

In the wake of the mass shooting, three condominium organizations –

ACMO, CCI and CAI – came together to form three joint Safety and Security Committees. We (the authors) are members of the Legislative Committee. The focus of this committee is to propose legislative change so that adequate legal protections are in place for directors, officers and managers. We found ourselves asking: “*What legal amendments could help keep condominium directors, officers and managers safe?*”

A number of reforms have been proposed by the Legislative Committee and can be reviewed at the Advocacy - ACMO page on the ACMO website. While we encourage readers to review all the proposals, this article focuses on one of the proposals, related to possible amendments to the Ontario *Occupational Health and Safety Act* (the “OHS”).

Proposed Amendments to the OHS

The OHS states that employers must prepare policies in relation to workplace



violence and workplace harassment and must take various additional steps, including the following:

- develop programs to implement the policies in relation to workplace violence and workplace harassment.
- assess and re-assess the risks of workplace violence.
- investigate incidents or complaints of workplace harassment.

It would be very helpful for the above obligations to apply to all condominium corporations, and all condominium properties in Ontario. In particular, the protections provided to workers should be extended to volunteer directors and officers. Unfortunately, currently they do not.

The problems with the OHSA are:

- The definition of “worker” under the OHSA does not apply to most condominium directors and officers (this is because most condominium directors and officers do not supply services *for compensation*).
- The definition of “workplace” in

the OHSA accordingly may also not apply to some condominium properties.

- The definition of “employer” in the OHSA also does not include some condominium corporations (and particularly may not apply to the relationship between condominium corporations and their directors and officers).

In light of the above, we have suggested that the definitions in the OHSA be amended (perhaps by adding a prescribed definition of “worker” in the Regulations under the OHSA) to make it clear that the above obligations (in relation to workplace violence and workplace harassment) apply to all condominium properties and to all condominium directors and officers in Ontario.

While the proposed OHSA amendments cannot undo the tragic events that took place in Vaughan; they hopefully can assist in preventing further violent events from transpiring.

Professional Advice

Even in the absence of legislative

reform, condominium corporations across the province have been considering ways in which to help manage the risk of serious harassment and violence.

When a given dispute (or a particular resident) carries a risk of serious harassment and violence, the condominium corporation should consider immediately seeking expert advice, under the following categories:

1. Advice from legal counsel – as to the corporation’s enforcement obligations and options.
2. Advice from a mental health consultant – as to mental health resources that might assist.
3. Advice from a security expert – as to security measures that might be taken in light of any apparent or perceived risks of violence. Ideas might include:

- What are some the “cues” that emotional behaviour may cross a line (and therefore may become violent)?
- Directors, Officers, Managers and Staff should all have means (cameras, peep holes) to identify

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persons who come to their doors.

- Doors should not be opened to any uninvited visitor.
- Person-to-person communications should be avoided. Communications should only be in writing.
- No uninvited visitors should be allowed to enter a Board Meeting (or any meeting of staff or management).
- Security personnel should attend meetings (Meetings of

Owners and/or Meetings of the Board) whenever deemed appropriate.

- Security systems (such as surveillance cameras) should be upgraded when deemed appropriate.

Condominium corporations should budget a reasonable amount for the above expenditures.

Whenever appropriate, condominium corporations should not hesitate to involve law enforcement agencies.

Parting Thoughts

Ultimately, the proposed OHSA reforms aim to establish a greater level of protection in Ontario's condominiums. With or without these changes, however, Boards should seek professional advice to effectively minimize the risk of condominium harassment and violence.

We are hopeful for legislative reform. Security is the cornerstone of condominium community. ■

Antoni Casalinuovo is a senior lawyer with Deo Condominium Law who has been regarded as a litigation power house in the area of condominium law. Antoni is known for his tenacious and pragmatic approach to challenging and complex disputes whether it be a shared facilities issue, Tarion Warranty claim or multi-million dollar lawsuit. Antoni has been the successful counsel in several precedent-setting cases that have helped advanced the area of condominium law. Antoni is also the author to dozens of articles published across the province in several legal and condominium magazines such as the Law Times, CM Magazine and CondoVoice.

Nancy Houle is a founding partner at Davidson Houle Allen LLP. Her practice includes general corporate advice to condominium corporations, financing and secured transactions, building deficiency litigation, and proceedings involving disputes between condominium corporations and owners/residents. Nancy is the President of CCI Eastern Ontario, the Chair of the Government Relations Committee for CCI National, and sits on the Joint ACMO/CCI/CAI Safety and Security Committee.

Deborah Howden is a partner in the Condominium Law Group at Shibley Righton LLP. Her practice involves all aspects of condominium law issues for condominium corporations of all sizes across southwestern Ontario, including providing general corporate advice to condominium corporations on governance, building deficiencies, shared facilities disputes and compliance issues. She sits on the CCI - Toronto Legislative Committee and the joint ACMO, CAI and CCI Safety and Security Committee. Deborah can be reached at deborah.howden@shibleyrighton.com.



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Integrated Planning & Design Strategies that Create Value Momentum

By Peter Calcetas, P. Eng., M. Eng., MBA, F.CSCE, ENV SP/V/T, LEED GA



Peter Calcetas

Property ownership is motivated by the desire for control of an asset with the prospect of increasing its value over time. Savvy property investors use leverage to create value, not just financial leverage to acquire property but also the skills and knowledge of trusted experts.

In the immediate, short, mid and long terms, different strategies and expertise need to be employed to maximize value and mitigate risks to asset value. A diversified perspective creates a greater foundation of opinion in the development of strategies to contend with the various forces that increase positive value momentum and sidestep the negative momentum effects. As a Professional Engineer and Business Executive, I have worked with a variety of profes-

sionals and trades across the spectrum of the AEC [Architecture, Engineering and Construction], Real Estate Management and Development Sectors.

In my 30+ years of practice, we have found that the integrative design and planning approach creates the greatest long-term sustainable value growth. The following example illustrates the “Integrated Planning” journey a GTA Condo is contemplating to shield itself from negative value momentum from the forces of nature and inflation, while benefiting from positive momentum generated by sustainable solutions in LID [Low Impact Development], Green Energy, and advanced material sciences combined with financial engineering.

Situation: Our journey begins with the Management Team and Board of Directors for a 50-year old Mid Rise ten-story residential condominium

consisting of 47 Suites with parking, green space and amenities in Mississauga, Ontario’s Port Credit area. There is a continued convergence of private and public ambitions to revitalize the neighborhoods sharing the lakefront West of Toronto, including eight residential developments in and around Lakeview Village and Port Credit West Village, along with the rejuvenation of the Jim Tovey Conservation Area.

The range of value for residential condominium development in this area was approximately \$921 to \$1,148 per Square Foot with a Maintenance Fee range of \$0.81 to \$0.88 per Square Foot [SF], compared to The Condo’s \$1.05 - \$1.27 per SF per Month

The Opportunity: Historically, Condominiums in this neighborhood enjoyed a Market Value Compound Annual Growth Rate [CAGR] of 8.28%

Investment by Government & Non-Government Organizations



Source: https://www.insauga.com/wp-content/uploads/2020/02/lakeviewmap_0.jpg

while the Target Condo realized a Market Value CAGR of only 5.91%. Comparing the Target Condominium with the conservatively lower end of the range for Market Values indicates a potential to increase value by \$435 per square foot or \$435,000 additional value for a 1,000 Square Foot Suite.

Growing Value through Integrated Planning, Design and Execution:

Working together toward an achievable and ambitious goal of “Match Market Value in four to nine years”, the Primary Stakeholders composed of Owners, Property Management, Operations, Maintenance, Suppliers,

Specialized Lenders, Contractor and Consultant, need to collaborate together on a suite of solutions designed to integrate well. The timing is also driving momentum in favour of this approach thanks to the commitments from the Secondary Stakeholders Group composed of the surrounding Community, Government, Non-Government Agencies and Customers/Visitors.

The Plan: Integrated Design Synergy Focus on Building Systems with restoration and upgrades designed to work together.

Prioritize *needs* in coordination with *wants*, while making the work

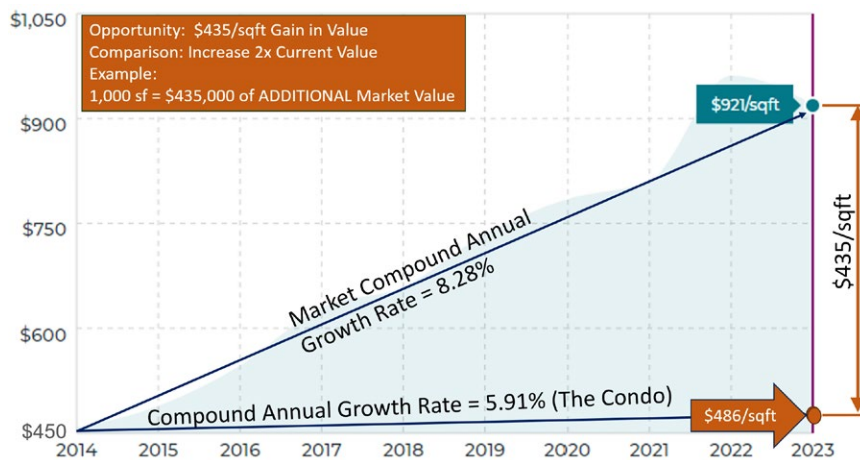
achievable with affordable financing from lenders, with the intention of minimal to no impact on the individual Owner’s credit rating. The Primary Objective is to have the asset match the Average Port Credit Value Curve by Year nine.

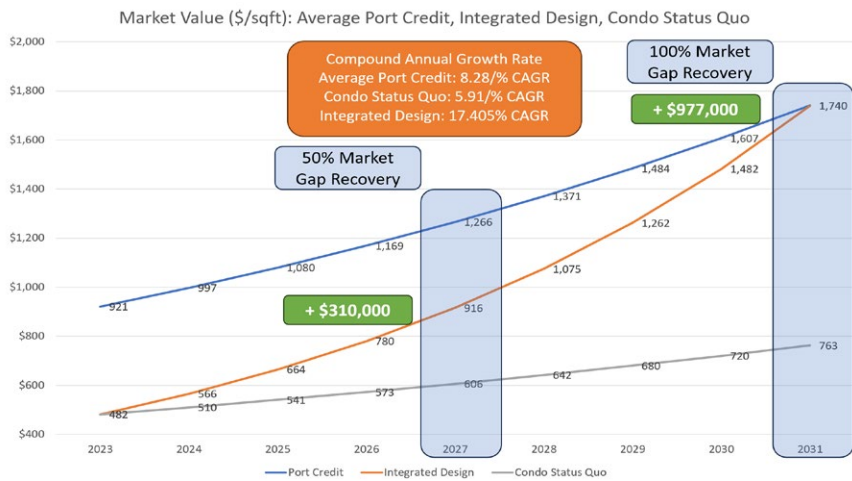
The Needs to Have: Given the condition of the asset the following set of needs are required, listed in order of most important to least.

- Reserve Fund Study, 2023
- Building Envelope: Moisture Resistant Walls, 2024
- Building Envelope: Insulation Augmentation, 2024
- Increase Electrical Capacity, 2025
- Garage Restoration, 2025
- Building Envelope: Roof Replacement, 2026
- Structural Movement/Settlement Mitigation, 2026
- Building Envelope: Windows, 2030
- Balcony Guardrail, 2048

The Wants to Have: Increase the value of the property beyond its “Baseline” by increasing the quality of life, reducing operational costs and increasing revenue.

1. Financing: to Corporation by Specialized Lenders, 2023 - Operational
2. Building Integrated Photovoltaic





- System, 2024 - Revenue [Solar Electricity] & LID
- 3. Rooftop amenities, 2024 - Quality of Life
- 4. EV* Charging Ability & Capacity, 2025 - Quality of Life & Revenue
- 5. En Suite Washer/Dryer, 2025 - Quality of Life
- 6. Air Condition in each Suite, 2025 - Quality of Life
- 7. Rain Garden, 2026 - Quality of Life & Low Impact Development [LID]

8. Wellness, Sports, Spa Amenities, 2027 - Quality of Life

Positive Value Growth Momentum:
 The Port Credit Condo Integrated Design has the potential to transition from a 5.91% asset CAGR to the Market Value Average CAGR of 8.28% or beyond. This translates to closing the gap from its current value curve to the Average CAGR in approximately eight years and 50% value gap closure in four years. Interestingly, a 1,000 SF

Suite would gain almost \$1 Million over an eight-year period, translating to a Value Growth CAGR over 17.4%. By designing a well-integrated plan with a Scope incorporating both the Needs of the Asset with the Wants of Ownership within an affordable budget for a total monthly carrying cost approximately equal to the current fees, achieved by balancing the Reserve Funds with external financing from lenders. Owning an asset, like a Condominium Suite, is the manifestation of a belief that it will continue to serve at least one purpose very well: shelter.

By leveraging the talents and perspectives of Primary and Secondary Stakeholders, the Asset Owner can achieve Value Momentum with Integrated Design, Planning and Execution. ■

Peter CALCETAS (He/Him), P. Eng., M. Eng., MBA, F.CSCE, ENV SP/V/T, LEED GA, Partner & Executive Vice President, Professional Engineer, BEST Consultants Martin Gerskup Architect Inc. bestconsultants.ca



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Condos' New "Employer's" Liability for Construction Safety

By Alex Young & Bob Gardiner

In the recent Supreme Court of Canada decision of *R v. Greater Sudbury (City)*, the court held that an "owner" of a property where a construction project was undertaken can be considered an "employer" under Ontario's *Occupational Health and Safety Act* (the "OHSA"). This new layer of responsibility can be imposed upon a condominium corporation when one of its employees attends or should have inspected any health or safety criteria at its construction work site.



Alex Young



Bob Gardiner

For the purposes of the OHSA, a condo is an "owner" of the common elements and has health and safety duties as an "employer". Section 26 of the *Condo Act* deems a condo to be the "occupier" of

its common elements, liable for injuries caused by its negligence. Condos, as "owners" and "employers" of common element projects, should improve their construction contracts, policies and safety measures accordingly.

In *R v. Greater Sudbury (City)*, the City hired Interpaving Limited to repair a downtown water main. Interpaving was responsible for overseeing the project and acting as the "constructor". Interpaving was thereby responsible for health and safety of all workers at the work site. An Interpaving employee driving a road grader in reverse fatally struck a pedestrian crossing an intersection in a construction zone. The Ministry of Labour charged the City and Interpaving with OHSA violations, finding that the work site lacked necessary safety measures which could have been under the City's control. The Ministry's position was that the City was a "constructor" and "employer" under the OHSA.

The Supreme Court upheld the Ontario Court of Appeal's decision that the City was not the "constructor" but was responsible as an "employer" of the contractor and its workers and had breached its duty under the OHSA to monitor safety measures at the work site.

The Supreme Court's ruling means that the OHSA's definition of "employer" must be interpreted broadly. A project owner such as a condo can be deemed an employer if it should have inspected the construction work site, regardless of whether the condo has direct control over the project or workers. Now, a condo is deemed to be the "employer" under the OHSA with respect to not only its manager, superintendent and cleaners, but also a contractor, subcontractor or engineer involved at the worksite, if any of them or even a member of the public is injured at the work site due to the condo's failure to monitor safety precautions.

There must be a collective approach to workplace safety now that multiple parties can concurrently be held responsible for the same safety measures. The safety failures of a contractor cannot be used to absolve a project owner from a strict liability prosecution exerted by Ontario's Attorney General in the Provincial Court.

However, a project owner can rely on the due diligence defence where it lacks direct control over the workplace or workers, if it can show it has actively monitored and evaluated the workplace safety compliance abilities of its contractors and personnel, and if it ensured that the workplace was properly protected.

A condo should ensure its construction contract imposes all necessary obligations on its contractor, as "constructor", to best protect the condo, both as occupier of the common elements and as employer of its manager, superintendent, contractor and others who may be involved in supervising the work of the contractor as well as any other individuals attending at the condo's work site. If a condo has retained the services of an engineer to act as the "Consultant" under

a typical CCDC construction contract, the condo should have a separate agreement with the engineer, including a provision wherein the engineer should be responsible for inspecting the contractor's contract, work and work site, as well as OHS/A compliance.

Condos should review and strengthen the indemnification clauses in their contracts with their contractors and engineers, as Gardiner Miller Arnold LLP (GMA) has done in its precedents. Even if the Ministry were to prosecute a condo, the condo could legally protect itself by enforcing an appropriate indemnity provision binding its contractor and engineer.

In reality, condos often act as their own general contractor and are therefore responsible as the "constructor". In such cases, condos should avoid retaining the services of more than one contractor to attend at the same work site at the same time. If two separate contractors are doing work upon the common elements, condos should ensure they do not occupy an elevator, loading area or other common elements concurrently serving separate

work sites. When applicable, condos should give the required notice to the Ministry of Labour and obtain its consent to dual contractors working at the work site.

Many condo projects involve service providers who undertake work through their own personnel upon the common elements, using their own individual form of quotation or contract. Condos should ask their lawyers to provide 15-30 protective measures compared to the service provider's initial form of contract. GMA's Standard Condominium Contract Conditions can supersede most contractors' typical Terms & Conditions which are often hidden in faint small print, so as to protect the condo's interests by commercially reasonable provisions. ■

Alex Young is a condo corporate and commercial lawyer and associate of Gardiner Miller Arnold LLP.

J. Robert Gardiner, B.A., LL.B., ACCI, FCCI is the senior partner of Gardiner Miller Arnold LLP practicing condo law. ontariocondolaw.com



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Do's & Don'ts for Managers Dealing with Noise Complaints

By Victor Yee



Victor Yee

When faced with a noise complaint in a condominium, what should a manager do? More and more people are living together in communal environments next to, on top of, or below each other, so dealing with noise complaints is a significant aspect of a manager's day-to-day responsibilities. Noise disputes between neighbours are becoming more prevalent due to the proliferation of working-from-home, shift work and gig economy jobs, and more multi-generational households living in a single unit.

Not all noises are the same though, and each community's circumstances are different. A resident living in a quiet cottage townhouse in northern Ontario might have different expectations for noise tolerance than a resident living in an urban high-rise in downtown

Toronto. Additionally, various organizations and levels of government have put out different noise criteria for different circumstances or different types of noise, and various municipalities have set out varying noise thresholds in their municipal by-laws. There is currently no specific noise threshold selected by the courts or the Condominium Authority Tribunal (the "CAT") as to what constitutes "unreasonable noise" under Section 117(2)(a) of the *Condominium Act, 1998*.

Condominium Managers are the front-line personnel tasked with investigating noise complaints and dealing with the different parties, in addition to their many other daily responsibilities. Managers are not acoustical engineers and do not have their own specially calibrated noise investigation equipment, yet with the cost of acoustical engineers and the pressure to mitigate increased common expenses in condominiums these days, Managers are often the first

responders to a noise complaint, particularly in communities without concierge or security services.

Although there is no one-size-fits-all approach, here are some general Do's and Don'ts for Condominium Managers in Ontario when a noise complaint is received from a resident regarding noises emanating from another unit.

The Manager SHOULD:

1. Let the complainant know that Management is taking their complaint seriously.
2. Contact the resident(s) of the unit that the noise is allegedly emanating from and advise them that a complaint about noise has been received. Be sure to include the owner(s) of the unit in your correspondence, if they do not reside in the unit.
3. If complaints continue, ask the complainant to document

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everything in a detailed noise log (for example, a chart/table setting out the date and time that the noise was heard, the type of noise it was, the duration/frequency of the noise, and where in the unit the noise was heard), and to use their smartphone to take video/audio recordings of the noises when they occur. The noise log should be provided to Management every couple of weeks or every month, depending on how frequently the noises occur.

4. Arrange for the Manager and at least one other staff member (or a Board member) to enter the unit complaining about the noise, and two other staff members (or two Board members) to enter the unit where the noise allegedly emanates from – and provide advance Notice of Entry in writing to both. Attempt to re-create the noise complained of with the occupants of the units present. Document the visit with detailed notes, and any audio/video recordings. Take photos/videos of what circumstances might be contributing to the noise (for example, hard-surface floors with no area rugs or carpets, an upright or grand piano that is regularly played, a subwoofer sitting directly on top of the floor).
5. Consult with the Board of Directors and the condominium’s legal counsel about whether the condominium corporation should retain an acoustical engineer to conduct an investigation.

The Manager should NOT:

1. Minimize a resident’s noise complaint or take sides with the neighbour who is alleging noise disturbances. Even a resident who often complains about other matters, or who might appear to be overly sensitive to noise, may have a legitimate noise complaint.
2. Make definitive conclusions about where the noise is coming from; airborne or structural noise can travel in surprising ways in a multi-unit building.
3. Solely rely on their own experiences or hearing ability; just because the Manager themselves cannot hear the noise complained of, that does not necessarily mean that the noise must not be an unreasonable disturbance. Different people may have different hearing ranges and noise tolerance levels.

Sometimes, the noise might not be emanating from another resident’s unit, but instead, from mechanical equipment on the common elements or caused by the day-to-day operations of the condominium. The Manager should still take the noise complaint seriously, investigate, and consult with the Board about retaining professionals to investigate further.

Ultimately, a Condominium Manager must respond to the complaint, regardless of who the complainant is. Properly documenting the investigation steps that the Manager took in responding to a noise complaint, can go a long way in helping the condominium defend

against a CAT Application brought by a unit owner who is experiencing noise disturbances. Since a unit owner is only required to pay a \$25 filing fee to submit an online Application to the CAT, grievances about noise disturbances are constituting a considerable proportion of the disputes that the CAT adjudicates.

A condominium corporation must take “all reasonable steps” under Section 17(3) of the *Condominium Act, 1998* to ensure that the residents of the condominium are not causing unreasonable noise disturbances. This grey area of “reasonableness” is doing lots of the heavy lifting in the statutory language, and Managers are often doing the heavy lifting of carrying out the responsibility on a day-to-day basis at the condominium. Although noise disputes are still an evolving area of condominium law and there is no clear standard for what constitutes unreasonable noise, it is crucial to address the noise complaint from the perspective of an impartial observer, as that is the lens by which an outside adjudicator will be assessing the CAT Case if it goes there. ■

Victor Yee is a condominium lawyer at Shibley Righton LLP. As legal counsel, Victor advises condominium corporations on governance, enforcement, and shared facilities matters. As a litigator, Victor has successfully represented clients at all levels of court in Ontario, in private Mediations and Arbitrations, and in various tribunals including the Condominium Authority Tribunal. scondolaw.com



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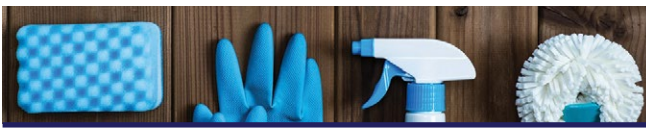
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Sara Hicks, B.A(H), OLCM, RCM, LCCI

MF Property Management Ltd.
Year entered the profession: 2010
Year RCM obtained: 2013

Mentor(s) in the industry: My colleagues

What path brought you to a career as a condominium manager?

My mother started a condominium management business, and growing up, I never thought it would be my chosen career path. I would help stuff envelopes or deliver notices as a child, clean the office in high school, and assist with reception coverage while in university. Once graduating, I covered maternity leave for someone who looked after commercial properties. One thing led to another, and I was soon taking my ACMO courses to get my RCM!

How has your membership in ACMO helped you in your career?

The ACMO courses were my introduction to the condo world. I started managing some small condos and enrolled myself in financial, HR, legal, and building courses. It seemed intimidating at first (sometimes, it still is), but the courses helped lay the groundwork for what the job would entail.

What is one must-have skill for a condominium manager? Why?

One is hard to name since the job asks for many skill sets. As much as being able to multi-task and communicate efficiently comes to the top of my mind, I feel that being able to deal with the negativities of the job is huge. People don't contact us when they are pleased.

Managers speak to residents who are worried they cannot afford their bills, upset about projects impacting their daily living or how neighbours are affecting them. Some don't understand what they've purchased or how rules must be enforced, topics which can also come out on the property manager. We should all have tools to prevent all that from compiling and keep us up at night.

What is your biggest challenge as a manager?

I referenced this earlier, but dealing with the negative emotions that come from clients and facing that conflict in a healthy way. We cannot change the people we deal with, but we can change how we deal with it when it happens and how it impacts us. I put myself in their shoes and often feel more sympathetic to their position. It is easy to think, "If they only read

I had strong imposter syndrome for years. How could anyone listen to what I had to say? Was people's largest investment in my hands? I had to have multiple cases of providing solid advice...

Tell us about a personal success story on the job.

It is hard to recall specifics, but in general, when you get a Board to trust you and your opinion, that feels like a win. As a young female manager who started out fresh out of university, I had strong imposter syndrome for years. How could anyone listen to what I had to say? Was people's largest investment in my hands? I had to have multiple cases of providing solid advice, have the Board trust in my opinion, and be happy with how the situation was handled to feel more confident. This took time and experience.

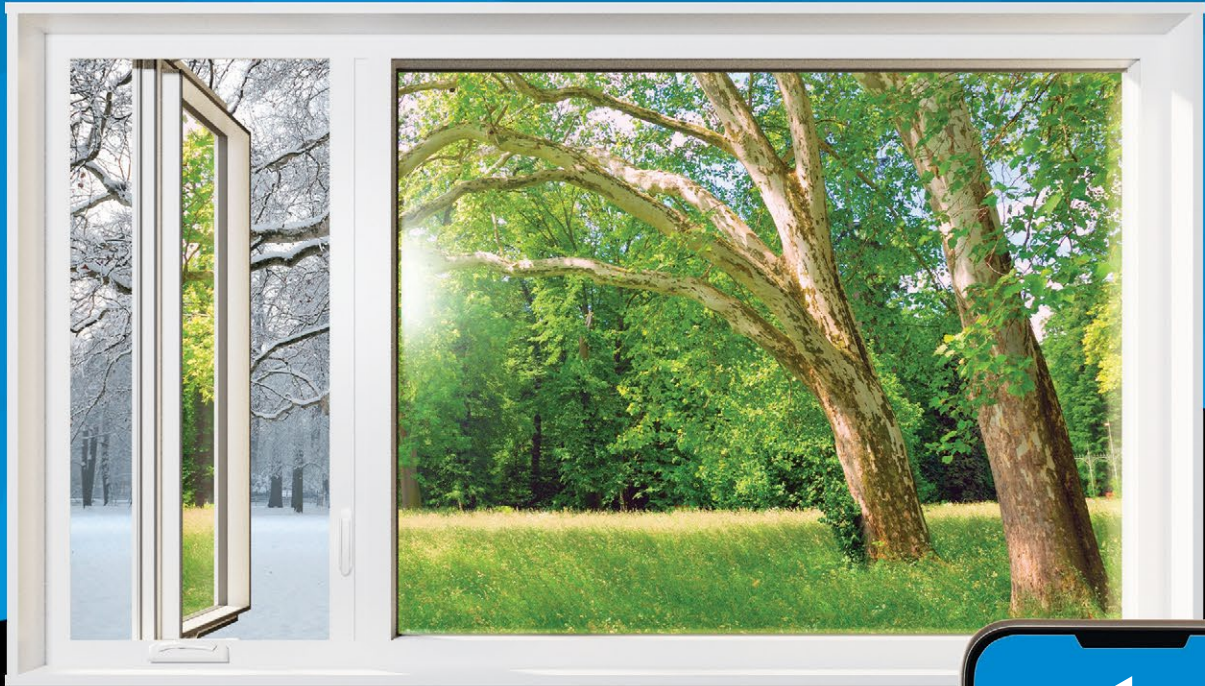
their legal documents," but this is not always realistic. We don't know what caused the person to move into this condo or what is happening in their personal lives. However, I have also learned that boundaries are important. It is okay to tell an irate individual they cannot communicate in a hostile way and then offer an ultimatum to end the conversation if they persist. I used to think that taking that sort of abuse was just a part of the job, but we need to feel confident to draw the line because harassment is never acceptable.

What is your favourite part of the job?

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That may be anxiety-inducing for some since it is far from predictable, but it doesn't make your day boring. You never know everything, and the environment is conducive to ongoing learning.

Best business advice you ever received. You will never make everyone happy. Many of us are people pleasers who care very much and want to do a good job, and negative comments can really get in the way of feeling accomplished. I think we need to accept that it is okay: we will never be in everyone's good books, but that shouldn't take away from the work we do.

Answer this statement – I am an RCM because... I think it shows how important ongoing learning is in the industry. Not as many condo owners know this, and they likely should, but I maintain it for myself.

Where do you see yourself in five years? Hopefully maintaining a healthy work/life balance. Our jobs are important, but our own health and well-being cannot come second.

What recent project that you completed can we highlight? I recently worked with a build-

ing whose master key had been stolen from its locked superintendent's office. In the moment, it was panic-inducing...the whole building and every unit was exposed! I got to work ensuring the exterior doors were secured and communicated the incident to the owners in a non-panic-inducing way before it got out. I kept it as a matter of fact and gave them the action plan, which the Board approved. We had security in place to walk the exterior as well as the interior, as we suspected someone would return (which they did in the middle of the night. Unfortunately, they ran off before being apprehended). The superintendent company worked with security as well as the locksmiths, and we soon had the whole building rekeyed. As a result of this incident, we made the super's office and the entrance doors more secure, as well as all keys and lockboxes onsite. Regrettably, it was a costly endeavour, but the impromptu project went smoothly, and there were no further thefts once everything was updated. ■

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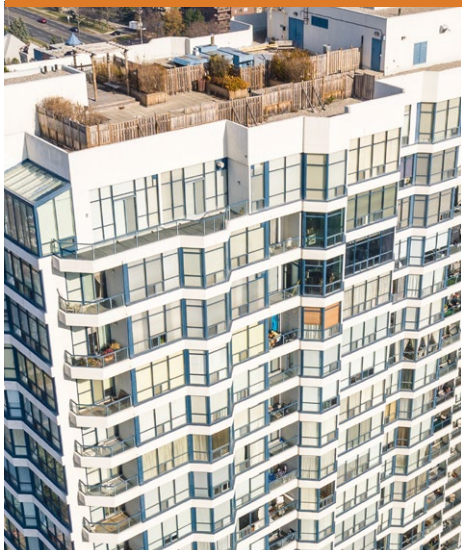
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Craig McMillan

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ACMO 2000 companies voluntarily adhere to a series of vigorous core management principles and standards that improve their operation efficiencies and effectiveness, allowing them to deliver a higher level of service to their clients. MRCM has been ACMO 2000 certified since 2007, and re-certified every three years since then, with the most recent certification in 2022. MRCM has regularly received auditor feedback noting the completion of, in their view, exceptional audits and re-certifications, providing superior quality service to those we serve.

ACMO 2000 certification also served as a catalyst for organizational introspection. With every audit completed, MRCM took the opportunity to conduct a comprehensive assessment of our operations, policies, and procedures, scrutinizing every facet of our management approach, which speaks to our culture of continuous improvement.

ACMO 2000 certification also empowered MRCM to anticipate and adapt to the evolving needs of our clients. By staying abreast of regulatory changes, industry trends, and technological advancements, MRCM is positioned as a proactive partner in safeguarding the interests of our clients and maximizing the value of their investments.

Beyond the tangible benefits, ACMO 2000 certification fostered a culture of accountability and professionalism amongst our team. Each staff member is a steward of MRCM's commitment to delivering condominium management excellence, embodying the organization's values of delivering that excellence to every client, every day, every time.

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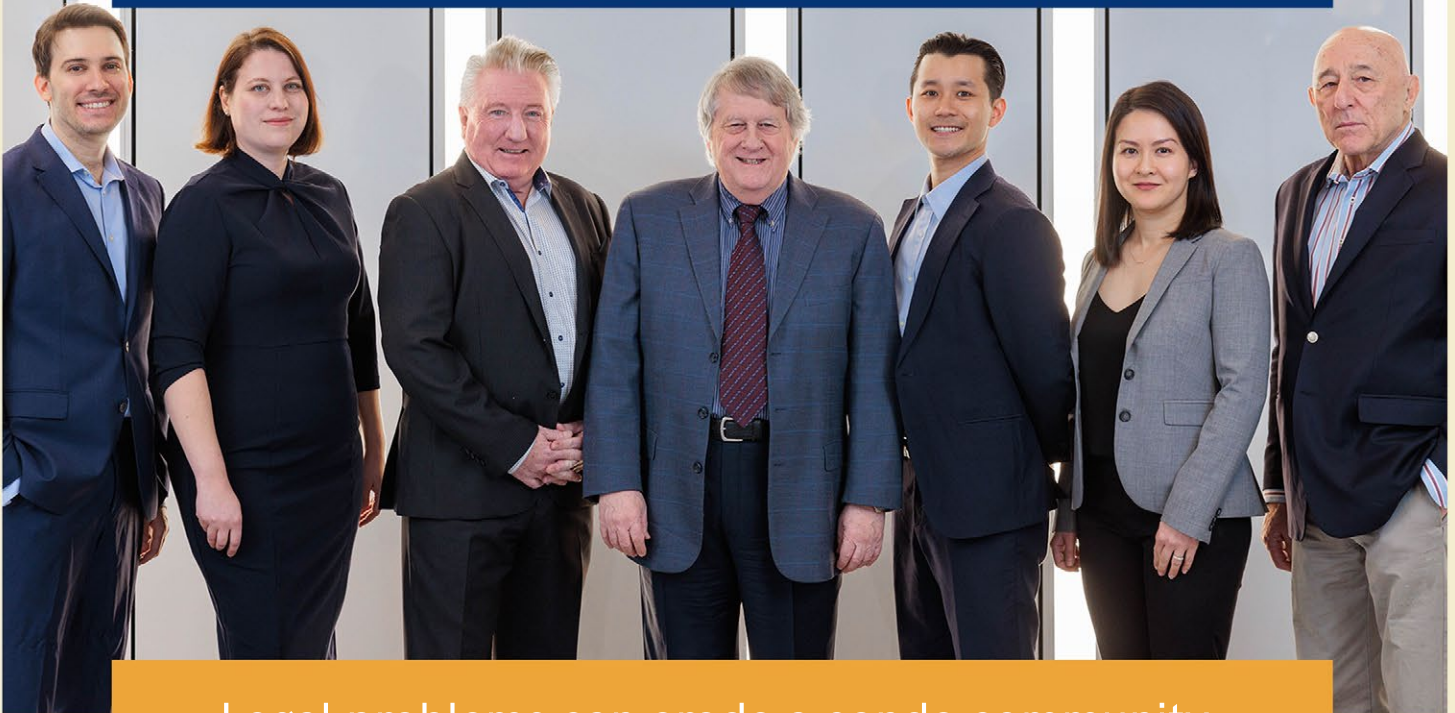


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