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Protection of Property Managers

Anyone working in the condominium industry has likely encountered situations where mental health issues play a role in problems and disputes within a condominium community. The prevalence of these incidents naturally increased during the covid-19 pandemic, with unit owners and occupants spending more time than ever at home in their units and on the condominium property. Noise issues that may otherwise have only affected someone for a couple of hours a day became an all-day situation. Children were spending more time at home and inside and, understandably, were making more noise than usual. Tensions were high as everyone adapted to the realities of working from and staying at home.

The Duty to Protect

The increase in disputes and issues arising from, or exacerbated by, mental health issues has had – and continues to have – a powerful and negative impact on property managers, who are the direct interface between owners/occupants and boards of directors. Unfortunately, mental health issues often manifest themselves in harassment and other unacceptable behaviour by owners/occupants and directors in situations within condominiums. This is a significant concern in an industry where property managers are already under pressure from the relatively new additions to their management obligations under the *Condominium Management Services Act, 2015*, as well as the expanded jurisdiction of the Condominium Authority Tribu-

nal, where property managers must often assist condominiums in responding to applications commenced by owners.

Under the *Occupational Health and Safety Act* (OHSA), condominium corporations are workplaces and have a legal obligation to protect their employees and agents from harassment and to pursue remedies in situations where harassment occurs. While property managers are not usually employees of the condominium but rather the management company for which they work, they are agents of the condominium for the purposes of the OHSA, and so fall under its protection. If a board is made aware of a situation where an owner or occupants are harassing a property manager or a director (which unfortunately does happen, although less often), it is the respon-





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sibility of the board, on behalf of the condominium, to take steps to address the issue and protect the manager.

In addition to the OHSA, the duty to protect managers (and owners, occupants, and directors) from harassment can also fall under section 117 of the *Condominium Act, 1998* (the “Act”), which mandates the condominium’s obligation to protect against activities that are likely to cause injury to an individual. Several court decisions have found that psychological harm arising from verbal and written abuse and harassment can fall under the injury discussed in section 117.

Harassment Incidences Climb

The decision of *Ottawa Carleton Standard Condominium Corporation No. 671 v. Friend*, 2019 ONSC 3899 (CanLII) discussed the issue of harassment under both concepts. In that case, an owner, Mr. Friend, was alleged to have, over several years, consistently and repeatedly committed instances of verbal and written harassing communications to the directors, manager, and even contractors of the condominium corporation, as well as to the condominium’s legal counsel. The motion requested a Declaration that Mr. Friend’s conduct constituted workplace harassment under the OHSA and a breach of section 117 of the Act by risking the health and safety of employees, contractors, and residents of the condominium. The condominium also requested an Order that the owner cease the problematic conduct. The Order and Declaration were granted, as was an inter-

locutory injunction during the larger court action that clarified the specific ways in which Mr. Friend was allowed to communicate with the condominium.

In a more recent case, *Metropolitan Toronto Condominium Corporation No. 580 v. Mills*, 2021 ONSC 2616 (CanLII), the Court not only recognized that harassment could constitute a breach of section 117 of the Act but in that situation also found that the owner’s conduct constituted oppression. The owner, in that case, suffered from “severe and pervasive disabilities that impact and impair his ability to participate in the condominium community,” as stated by the Judge hearing the matter. While both the owner’s disabilities and the duty of the condominium to accommodate were recognized, the issue was that the owner had conducted ‘unrelenting harassment’ of the board and its legal counsel, as well as contractors and other residents of the condominium. The condominium sought an Order to, among other things, prevent the owner from communicating with the board by any means, except in the event of an emergency through the condominium’s mailing or email address; communicating in any way with the condominium’s authorized agents and contractors, and making any threats directed toward the board of directors and their legal counsel.

While this second case did not involve a property manager, this type of behaviour is often directed toward managers. It is reasonable to surmise that if a manager had been involved, the conduct would also have been harassment of the manager and a breach of section 117 toward the manager

and the other individuals involved.

These two cases clearly show that harassing conduct toward condominium property managers will be taken seriously by the courts and is the responsibility of condominium corporations to prevent and address.

A Safe Place for All

Mental health disorders do not always, or even usually, cause individuals suffering from them to act in problematic ways for others, particularly to the extent that will constitute harassment or a breach of the Act. Individuals suffering from mental health issues should be treated with respect and consideration and accommodated appropriately. However, this does not take away from the right of property managers to have a workplace free from harassment. In what is already a high-stress job, harassing and problematic conduct from owners and directors could have serious and substantial negative impacts on managers’ mental and physical health. When these concerns are raised, they should be taken seriously and addressed through the enforcement options available to the condominium, including legal proceedings if and where appropriate. ■

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