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You Can Avoid Legal Conflict of Shakespearean Proportions

"Much Ado About Nothing" remains an ever-current play by William Shakespeare. A satire on the internal struggles of an extended noble family, it portrays conflicts fuelled by gossip, mistaken identity and damaged pride. In the end, after mounting accusations are exchanged, duels threatened and reputations ruined, the leading characters, Beatrice and Benedick, set the tangled record straight, to widespread embarrassment. To avoid sober self-appraisal, the characters pitch themselves into weddings, the curtain falling on a scene of dance and merriment. The better the play is performed, the dizzier one feels.

While Shakespeare did not live in a modern condominium, even a sliver of reported cases summons his themes. Epic court cases have been fought over such titanic contests as replacing a canvas canopy, proxy signatures printed, not cursively signed, or the true effectiveness of a children's pool diaper. (See *Little v. Metropolitan Toronto Condominium Corp. No. 590 2006 CarswellOnt 4984*, [2006] O.J. No. 3294, 50 R.P.R. (4th) 128; *Hogan v.*

Metropolitan Toronto Condominium Corp. No. 595 2014 CarswellOnt 8445, 2014 ONSC 3503, 241 A.C.W.S. (3d) 977; and *Pantoliano v. Metropolitan Condominium Corp. No. 570*, 2011 HRT0 738 (Ont. Human Rights Trib.), respectively.)

Regrettably, some communities convulsing in inane conflict appear as prevalent today as in 1599.

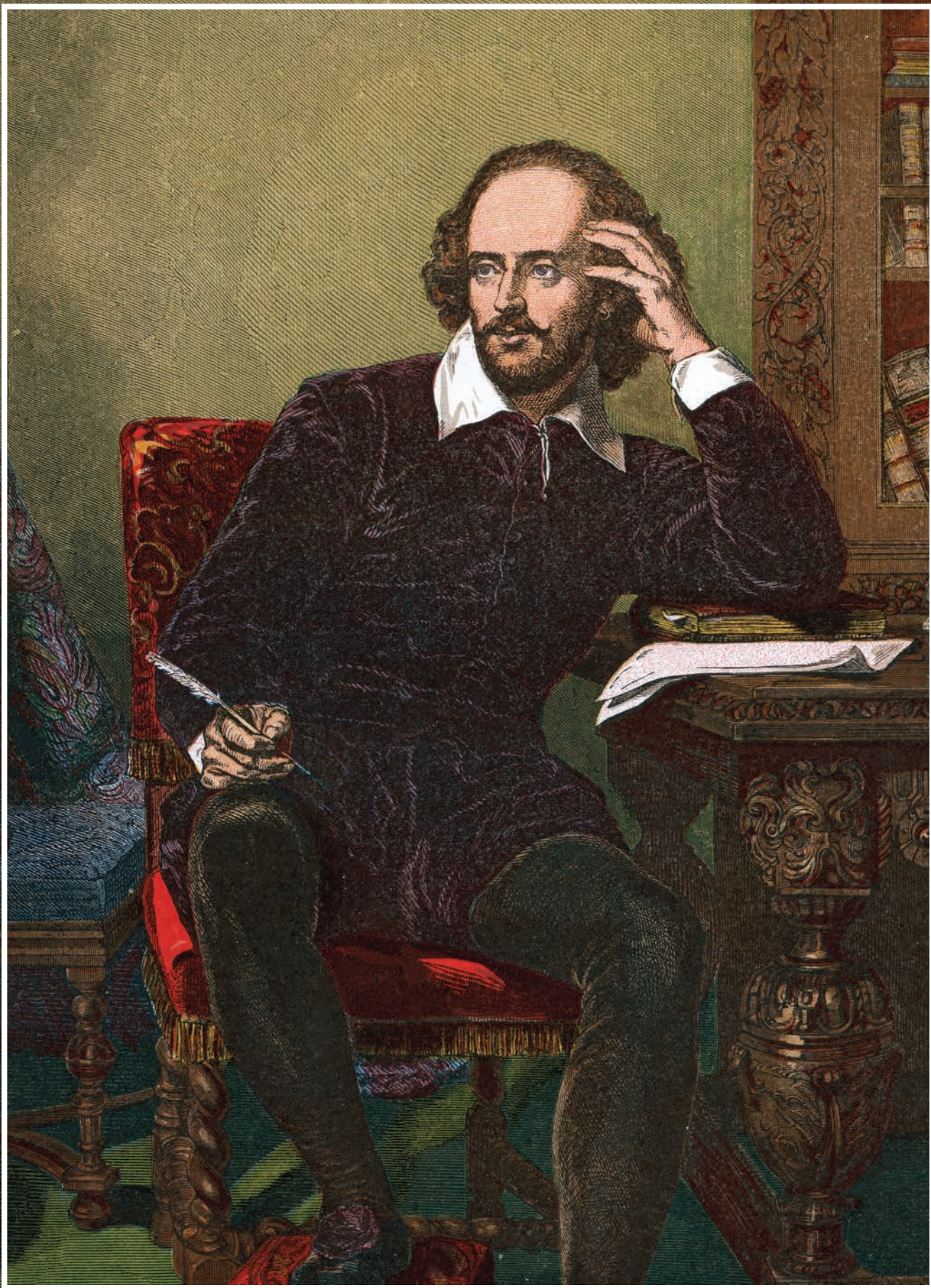
If you are a professional serving a condominium or a board member leading one, a conflict will invariably arrive at your door. Conflict is a consuming human exercise. Precious resources are called upon which could be directed elsewhere. While conflict may be unavoidable, the following ideas may be tools to avoid them becoming the stuff of comedy.

Keeping it Professional, Not Personal

During the annual general meeting at the conclusion of the president's report, a disgruntled unit owner rises to the floor. While his complaints are varied, he then centres on the president, ending with the

parting shot, 'thanks for being crooked', returning to his seat. The president, aghast, begins to react, her voice crackling as she begins a long and emotionally charged reply. Egged on by catcalls from the seated unit owner, the president's polished report now devolves into a contest of wills. While the president is successful in shouting down her accuser, who really won? Clearly the unit owner. Professional politicians are masters of this terrain; a voter accuses a prime minister of high crimes at a public event, the seasoned politician responds with a polite smile and returns to message. Do not take the accusation personally, recognize it for what it is: a trap.

Imagine if the politician's eyes widened, his finger singling out the accuser, his voice thundering as he demanded an apology from the voter. We would soon forget the accusation and remember his bellowing response. Recent memory calls upon federal NDP leader Jagmeet Singh's adept handling of an onstage heckler. Rather than contesting her, Mr. Singh thanked her



for attending. Returning to the annual general meeting, the president's more effective response may have been, "I am sorry you feel that way. I believe we had a great year, as mentioned fees only rose by 2%, the reserve fund is healthy, our audited financial statement is unqualified; I again would like to thank all of our committees, the volunteers..."

Personal Interactions

Cases in Ontario also revolve around board members and property managers having 'interactions' with unit owners. For example, during a site visit a satellite dish is found, a breach of the condominium's rules. The president, clipboard in hand, bangs away at the unit's door, with the comment, "I will deal with this right now." Finding no one is home, the president summons a ladder, the dish is soon grounded. Problem solved? Not likely, as cable television remains a touchy subject. The unit owner returning home finds her dish removed, a scribbled note in her mailbox. A call to the police and now the scene sees a verbal contest between a unit owner and the president, the latter ultimately charged with theft. (See *R. v. Nash* 1990 CarswellOnt 54, 12 W.C.B. (2d) 28, 28 M.V.R. (2d) 131.) The answer: follow a process and remove the personal interaction as much as possible from the equation. Do not knock on the unit owner's door, write a letter. When the unit owner calls the property manager, ask for his comments, in writing. This will not only build a paper-trail to serve the condominium, it will also assist in defus-

ing situations. Do not take matters into your own hands. Every infraction should have a process. Follow it.

Leading and Serving is Optional

When a group of unit owners muster a requisition to remove the sitting directors, the board and property manager meet, determined to prevail. A director comments with nodding agreement, "Only we have the knowledge to lead this condominium!" Owners' lists are prepared, talking points made and newsletters produced. The lawyer is called, asked to find any errors in the notice and contest them. While the board survives the removal vote, the human toll is high with sleepless nights, frayed emotions, a high legal bill and a property manager now considering stress leave. Soon after, further legal letters arrive, claiming the meeting was improperly conducted and a recount sought. While defending oneself is admirable, not every struggle is worth... the struggle. Sometimes the art of a tug of war is letting go, with a smile. A property manager should not feel ill attending work every day. A director should not feel compelled to spend tens of thousands of dollars defending her elected position. Leading and serving a condominium is optional, not mandatory. Regrettably the legal landscape is littered in Ontario with contested court cases involving requisition meetings, disputed elections and competing candidates, leaving many to wonder, why?

Public Conversations

A few years ago, I stayed outside of Orlando in a resort condominium community. In the centre, the community had a large and beautiful pool facility. One day while I lounged by the pool, two gentlemen lingered nearby with stress and concern on their faces. They muttered about Ms. Jones being in arrears, the upcoming election, a recent dispute at a shared facility's meeting and a nuisance dog on their radar. When I asked if I could guess between them who was the board member and the property manager, their faces dropped. Had even a passing acquaintance of a unit owner heard the conversation, conflict would have likely followed. Be impeccable with your words, and be careful when you speak, if at all. Gossip is a corrosive force in any organization, including condominiums. Leave conversations about board business strictly at the board meeting. Otherwise, conveying confidential information is a violation of the *Condominium Act, 1998*. (See *Condominium Act, 1998*, S.O. 1998, c.19, 1998, section 55(4)(c).)

Be Consistent

One day a unit owner installs a hot tub, a violation of the condominium's declaration. Years go by, unnoticed by the board. A new manager arrives, citing the problem. Given its length, the hot tub is 'grandfathered', allowed to remain but no further hot tubs permitted. A neighbouring unit owner sees the hot tub, and in turn installs his own. The condominium brings enforcement against the new hot

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tub owner, the unit owner in turn putting up a stiff fight, citing his neighbour's long-standing hot tub. While the courts will grant latitude and choice of enforcement for boards, many conflicts arise when a unit owner feels inconsistently treated. (See *Peel Condo Corporation 108 v. Young (2011)*, 4 R.P.R. (5th) 162.)

Everything a condominium does, from the minutes that are produced, the repairs that are performed, the letters that are written to the rules that are enforced should strive to have the appearance and substance of consistency.

Be Prepared and Be Open

Unfortunately, a recent spike in condominium cases have seen unit owners, often former board members, challenging decisions made by a successor board. (See *Patterson v. York Condominium Corporation No. 70 2018 CarswellOnt 13189*, 2018 ONSC 3735, 295 A.C.W.S. (3d) 428.) Some unit owners have gone to such lengths to prepare competing reserve fund studies, preferred investment plans and complete strategic plans. If not followed, the unit owner resorts to court, seeking the judiciary to intervene and adopt their

superior plans. The courts recently have sided with well-prepared boards, recognizing the business judgment rule that demands deference to an elected board who are following the law. Therefore, be prepared. That said, also be open to new ideas. Should a unit owner's report drive board decisions? Absolutely not. But if a unit owner recognizes that her reports were entered into the minutes, received fair consideration and elements even adopted, he or she may be less motivated to launch a court case costing the condominium ten of thousands of dollars in unrecovered fees.

Regrettably, conflicts in a condominium setting are common, and in the end of Shakespeare's play, the origin of such often long forgotten. Do not forget to avoid the trap of making it personal, by always being consistent and open and maintaining boundaries. ■

Robert Mullin is a knowledge leader in Ontario condominium law, writing and speaking frequently on the subject. He regularly works with developers, property management firms and condominium boards across Ontario. svlaw.ca



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