

Defamation: What a Manager Should Know, Do and Avoid

By Timothy Duggan

“Sticks and stones may break my bones, but names will never hurt me.” People reading this article may be familiar with this expression from childhood. It stands for the idea that a verbal attack cannot injure its target in the same manner as a physical attack might. As any child who has been called names in the schoolyard could tell you, however, words can hurt even if no bones are broken.



The law of defamation is intended to protect people from what is often referred to as the “sting” of hurtful words or expressions, specifically those words that might have a negative effect on a person’s reputation. In a condominium context, where people are generally living in close proximity to one another, conflict can arise. A property manager may witness one unit owner or board member saying hurtful things about another member of the community, or even about the manager. As such, managers should be familiar with the basics of the law of defamation, and

should know what to do (and what not to do) in these circumstances.

What is Defamation?

Defamation is generally defined as the publication of a statement which tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt or ridicule. “Publication” can be distributing or communicating the statement to people other than the person to whom the statement refers. A “statement” can be oral or in writing. Oral defamation is generally referred to as slander, while written defamation is generally referred to as libel.

In a condominium context, defamation can take many forms. These might include defamatory comments made at a meeting of owners, defamatory statements made in a flyer that is posted in the building, or a defamatory email that is circulated to the unit residents.

In an action for defamation, once the plaintiff establishes that the statement is defamatory, the burden shifts to the defendant to establish a defence to the action.

Available defences in a condominium context may include justification (the statement was true at the time that it was made), fair comment (the statement was on a matter of public interest and was clearly a statement of opinion rather than fact), or qualified privilege (the statement was made in good faith on a matter of common interest between the person making the statement and the person seeing/hearing the statement). If a defamatory statement is found to be malicious (i.e., deliberately hurtful), that may serve to nullify a defence that might otherwise have been available.

How Should a Manager Deal with Defamation?

Where a defamatory statement has been made by a unit owner, resident or other member of a condominium community, a property manager’s best course of action will depend on a few factors, including who the target of the defamatory statement is, the seriousness of the statement, and whether the statement is part of a pattern of defamatory behaviour by the person making the statement.

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If a defamatory statement is made about a director, employee or agent of the condominium corporation, the corporation may have a duty to take steps to address and prevent further defamatory statements in order to protect the director, employee or agent. The corporation's duty to act in circumstances like this has been recently recognized by the courts in cases like *York Condominium Corp. No. 163 v. Robinson* and *Carleton Condominium Corp. No. 282 v. Yahoo! Inc.* In those cases, the courts held that the corporation's duty to act flowed from its overall obligation to address and prevent workplace harassment, and ensure that board members, employees and agents are not subjected to defamatory statements by virtue of their respective positions with the corporation.

If a defamatory statement is made by one unit owner about another owner, the corporation may not have the same overarching duty to respond as in the foregoing example. However, a property manager should consider whether the statement amounts to conduct that is contrary to the *Condominium Act*, 1998 or to the corporation's declaration or rules.

For example, many condominium corporations have provisions in their respective declarations and rules that prohibit any activity that unreasonably interferes with a unit owner's enjoyment of his or her unit or of the common elements.

What Should a Manager Avoid Doing?

First, a property manager should try to avoid, as best as possible, being pulled into the fray. Many times, a unit owner or resident who is engaging in defamatory behaviour may be trying to simply pick a fight. A manager would be well-advised to not give the owner or resident the satisfaction of responding in kind.

Second, and more significantly, a property manager should avoid defamatory language in the manager's own communications. This is particularly important in the context of emails and other electronic communications, which can very easily be redistributed by their initial recipient(s) to a broader audience, as well as shared on social media. Similarly, a manager would be well-advised to avoid posting anything work-related on the manager's personal social media

accounts, as any defamatory posting could have both professional and personal consequences for the manager.

Finally, when in doubt, get advice. If a manager is unsure about how to handle a situation involving defamation (or potential defamation), he or she should speak with someone in his/her organization (e.g., the regional/area manager) or with the corporation's lawyer to get advice on how to proceed. Words may not break bones the same way that sticks and stones do, but they can still sting, and it is important to address that sting properly. ■

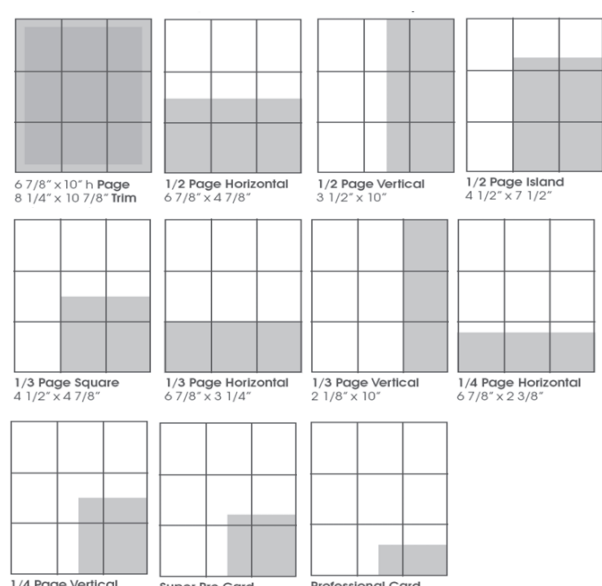
Timothy Duggan is a condominium lawyer and litigator with a focus on condominium governance, enforcement and related issues. Tim has represented condominiums and owners in a variety of courts and tribunals, including the Superior Court of Justice, the Divisional Court of Ontario and the Court of Appeal for Ontario. In addition to contributing to CM Magazine, Tim also writes regularly for a variety of other publications, including NOW Magazine's "Reasonable Doubt" column. hldlawyers.com

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