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In the recent past, there has been a lot of press and TV commentary surrounding the unfortunate and growing trend of abuse of women by men.

Do NOT Ignore Potential Liabilities!

Recent events following a soccer match in Toronto took this to a new low after which Hydro One fired a young engineer who had made \$106,510.50 a year. Too bad, so sad.

A question came to mind: could those who serve the condominium industry ever face a serious issue that involved harassment, and abuse? The short answer of course, is yes.

Consider this hypothetical situation as an example: the superintendent of an apartment-style condominium regularly stares into the unit of a single woman. She keeps a record of the occurrences and sends a letter to the board, stating she feels threatened and asks the board to put a stop to his behaviour. They take the matter under advisement and request time to consider.

To help understand the legal implications, I reached out to Michelle Kelly, a partner at Sutherland Kelly LLP in Guelph and Josh Milgrom the President of the Board of Directors of a large condominium and a lawyer specializing in condominium law at Aird and Berlis LLP in Toronto.

It turns out the situation can become quite complex because it touches on a number of areas of the *Condominium Act, 1998*. Mr. Milgrom tells us “The corporation has a duty to manage the property and it must therefore take steps to investigate and deal with an issue when it learns of potential inappropriate behaviour of its employee.” Therefore, upon hearing a complaint that touches in harassment, the board should immediately launch a thorough, prompt, independent investigation so that it can assess the complaint and take necessary action. But, if instead of this, what happens if the board does nothing?

Ms. Kelly says that by doing nothing about the superintendent’s inappropriate behaviour, the condominium and directors are exposed to possible civil and criminal liability. Mr. Milgrom added “If a corporation fails to take steps to investigate and stop harassing conduct by one of its employees, it would be exposed to what seems to be very avoidable liability.”

Condominium apartments are vertical villages; owners and staff mingle and develop close personal

relationships over time. What if a director or directors have a personal relationship with the superintendent, and what are the implications? Ms. Kelly pointed out that while S. 40 & 41 of the Act which addresses disclosure of conflict generally address contracts and transactions “...the directors have a general duty to act in the best interests of the condominium.”

Thus, if a director should have a personal relationship with the superintendent, it should be disclosed to the board as a conflict of interest. The director should step aside from the decision making process related to this issue. She added “If they do not, they could be found to have breached their duties and be liable for costs.” Josh Milgrom summed it up nicely when he said “Even with the most sincere of intentions, directors can find themselves involved in situations where their personal sentiments towards an employee interfere with their obligation to manage the corporation. Acting in good faith requires directors not to offer special treatment or willingly turn a blind eye to the actions of employees”.

What happens if a breach of duty is demonstrated and proven? Both experts agree: Directors proven to be in breach could be found to be personally responsible and liable for costs. Putting that into simple words, a director could find they have no indemnification under the Act and be required to pay some or all of the legal costs incurred by the corporation and by the owner who was violated by the superintendent, and those costs can run into thousands of dollars for each director.

If we were to look at this from a different point of view, what, if anything could the owner do to bring this matter to closure? Does the woman involved have access to redress under the Act? Does she have other avenues that can be used to seek redress?

Section 117 of the Act prohibits a condition or activity if “the condition or the activity is likely

to damage the property or cause injury to an individual.” S 134 tells us that an owner or occupier of a unit “may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act” and S 135 says that

...by doing nothing about inappropriate behaviour, the condominium and directors are exposed to possible civil and criminal liability.

“if the court determines that the conduct of a corporation threatens to be oppressive or unfairly disregards the interests of the applicant, the court may require the conduct be prohibited and may order payment of compensation.”

In addition, Ms. Kelly noted “... there are provisions outside of the *Condominium Act, 1998* such as civil proceedings for harassment, or invasion of >>>

>>> privacy or appeal through the Human Rights Complaint process. Invasion of privacy requires intentional conduct”. A relatively new concept is invasion without lawful justification of a person’s private affairs or concerns, where a reasonable person would regard the invasion as “highly offensive causing distress, humiliation or anguish.” There is a caution, however, in that this is a new concept and inadequate case law exists to predict an outcome based on this principle.

While legal remedies are available to all parties, the unintended consequences can be massive in a condominium community. The best, lowest cost advice that a board could be given in these circumstances would be to:

- **conduct a full, fair and independent investigation, gather evidence and document everything;**
- **if it is demonstrated that the superintendent has harassed the individual, reprimand the superintendent immediately in person and writing. Provide remedial training on HRC and OSHA. If further complaints are received, it may be necessary to terminate their contract;**
- **most importantly, these steps must be taken quickly, must be effective and time sensitive.**

These kinds of issues if not dealt with quickly and efficiently can erode the communal good will that is typical of condominiums. As Ms. Kelly said, the potential for “liabilities are too great to ignore.” ◀

Credits: Thanks to Michelle Kelly and Josh Milgrom with their assistance with this article.

Gray is an R.C.M. with Sanderson Management. He brings dedication and focus to his client partners. He has served condominium boards as both a Property Manager and Director.

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