

KEEPING CURRENT

May 14, 2021

Compliance Order obtained against condominium owners for unruly behaviour and refusal to wear masks

By James R.G. Cook

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

James R.G. Cook
Partner
416.865.6628
jcook@grllp.com

Living in a condominium requires a balancing of interests between the residents and compliance with the rules and by-laws that govern the community. No owner can be permitted run amok or impose their designs unilaterally on the rest of the condominium community. Personal activities must take into account the impact upon other residents, as regulated by the condominium's rules.

In *Carleton Condominium Corporation No. 32 v. Yakovlev*, [2021 ONSC 3323 \(CanLII\)](#), a condominium consisting of 177 residential units alleged that three unit owners had engaged in conduct that contravened the City of Ottawa's Temporary Mask By-law, which required the unit owners to wear a mask that covered their mouth, nose, and chin, when they were in an enclosed common area of the condominium. The condominium also alleged that the three owners had created excessive and unbearable noise at unreasonable hours, and engaged in aggressive and/or harassing behaviour towards others.

In April 2021, the Honourable Madam Justice Ryan Bell of the Ontario Superior Court of Justice heard an application for

an urgent cease and desist order brought by the condominium against the three-unit owners.

In response to the application, the unit owners claimed that they had been harassed by their neighbours and the condominium's board of directors, and that they have been subjected to constant surveillance. They claimed to have been so ill-treated that they had decided to move out of the building.

The condominium filed evidence of multiple reports of excessive noise coming from the units in question, with the noise often occurring in the late evening and becoming progressively worse through the night that continued after 10:30 p.m. The types of excessive noise reported included "cultural music and dancing," and the sounds of children fighting, screaming, stomping, and jumping against the walls inside the unit. There were also complaints about renovation-related noises and sounds of power tools being used at times prohibited under the condominium's rules.

Despite follow up actions and communications, including letters

from the condominium's lawyer and a warning notice from Ottawa by-law enforcement, the respondent owners' conduct and the excessive noise continued. As a result, Justice Ryan Bell found that the unit owners were in violation of the condominium's rules and section 119 of the Ontario [Condominium Act, 1998](#) (the "Act"), which requires that unit owners comply with a condominium's declaration, by-laws, and rules.

As to the allegations of engaging in inappropriate, aggressive and threatening behaviour, section 117 of the *Act* states that "No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual." The phrase "injury to an individual" includes psychological harm and has been applied to verbal and written forms of abuse: *Ottawa Carleton Standard v. Friend*, [2019 ONSC 3899](#), at para. 117.

The condominium filed detailed evidence of a series of confrontations between the unit owners, members of the board, consultants and other unit owners in the building. The condominium also filed evidence of a number of occasions on which the unit owners and their children were seen not wearing masks while in the indoor common elements of the condominium. Ottawa's by-law office had been called on multiple occasions and has issued warnings to the unit owners. In response, the unit owners stated that on some of the occasions when they were not wearing masks it was because they were eating. However, they did not address all of the complaints, claim medical exemptions, or deny that they were aware of the crucial importance of following the mask-wearing guidelines.

Based on the totality of the evidence, Justice Ryan Bell was satisfied that the unit owners had breached section 117 of the *Act* by engaging in aggressive, threatening and harassing behaviour against contractors, board members, and other residents.

The respondent owners were also found to have failed to comply with the Mask by-law, and that such conduct constituted a breach of section 117 of the *Act* since it this was a risk to the health and safety of other residents and the staff of the condominium: *Halton Condominium Corporation No. 77 v. Mitrovic*, [2021 ONSC 2071 \(CanLII\)](#), at para. 50.

There was no question that some aggressive and threatening, behaviour exhibited by the respondent owners was the most concerning. However, the entirety of their conduct confirmed that their non-compliance with the rules was repeated and persistent. Their behaviour had adversely affected others within the condominium, and the board of directors had spent considerable time and energy trying to address the unruly behaviour and address the safety and well-being of other residents.

The respondent owners had failed to show due respect for their fellow residents, and they had exhibited a pattern of behaviour that failed to take into account the impact of their personal activities on other residents as regulated by the rules of the community, in breach of the condominium's rules and the *Act*. As noted by Justice Ryan Bell, "Living in a condominium community is a special context that requires a balancing of the interests of those who live there" (39).

Accordingly, the Court declared that the



respondent owners were in breach of sections [117](#) and [119](#) of the *Act* and the governing documents of the condominium.

As to a remedy, the Court determined that the appropriate remedy was a “compliance order” requiring the respondents to comply with the *Act*, the corporation’s governing documents, and the *Mask* By-law, and to cease and desist their prior conduct. Further, the Court provided the opportunity for the condominium to seek a forced sale of the respondents’ condominium units in the future upon the filing of affidavit evidence confirming further breaches.

The decision demonstrates the types of urgent mandatory orders that may be obtained by a condominium in appropriate circumstances. Choosing to live in a condominium entails an agreement to conduct oneself in accordance with the rules of the community and with due respect and consideration for their neighbours and fellow residents. In cases where residents have demonstrated behaviour which contravenes the rules that govern the condominium community, the condominium may seek a court’s assistance. Ultimately, if the impugned conduct continues, condominium owners may be forced to sell their units and move out.

Contact us

If you have a litigation matter and are in need of legal advice, please contact [James Cook](#), at 416.865.6628 or jcook@grllp.com.

(This newsletter is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP.)