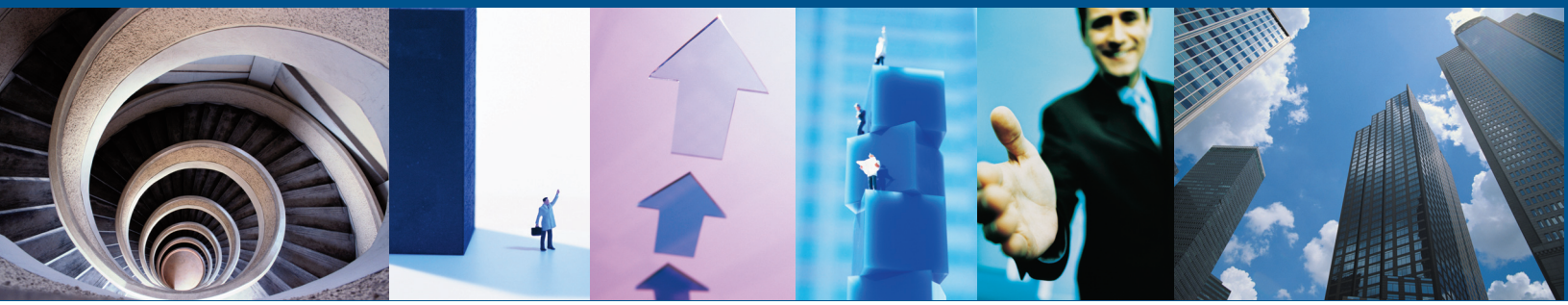

Workplace Violence and Harassment: Evolving Approaches in Ontario

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Many condominium corporations, boards of directors and property managers have had to respond to unfortunate incidences where condominium staff, such as concierges, superintendents, and security personnel, have been subjected to workplace harassment and even violence. Additionally, the expectations placed on condominium corporations and property managers to deal with workplace harassment and violence are complex and multi-faceted.

Condominium corporations and property managers are confronted with a bewildering array of legal obligations when responding to workplace harassment or violence. In the immediate term condominium corporations and property managers must ask:

- Is the conduct criminal and should the police be involved?
- Is the employee in need medical assistance?
- Is the employee entitled to workers' compensation benefits for any time off due to the harassment or violence?

In the long term, condominium corporations must consider their liability at common law. For instance, employees subjected to workplace harassment or violence may resign and commence wrongful dismissal litigation. In two recent cases Canadian courts have confirmed that an employer must take meaningful steps to create a civil and respectful workplace and failure to do so could result in significant damage awards.[1] Accordingly, condominium corporations ought to be diligent about ensuring staff are not harassed by tenants, owners, other staff members or agents of the corporation.

Two recent legal developments in Ontario highlight that condominium corporations and property managers must be vigilant in ensuring that condominium staff are not subjected to workplace violence or harassment.

MTCC NO. 932 V. LAHRKAMP – CONTROLLING THE UNRULY OWNER

The first is a case law development in which a condominium corporation successfully sought to restrain an owner from harassing its employees and the board of directors. In *Metropolitan Toronto Condominium Corp. No. 932 v. Lahrkamp,* an owner became an aggressive scrutineer of the board of directors and the condominium staff following the board's decision to renovate the lobby.[2]

The owner made repeated and onerous demands to access the records of the corporation, vociferously objecting if the records were not immediately produced. The owner also beset upon the corporation's administrative assistant with emails, phone calls and personal attendances at the management office, making inquiries about the affairs of the corporation. Over time the owner's conduct towards the corporation's administrative assistant became increasingly belligerent with the owner loudly banging on the office door and threatening to have the administrative assistant terminated if his demands were not satisfied.

The trial court easily found that the owner's actions toward the staff and the board of directors amounted to harassment and that it was appropriate for the corporation to take steps to stop the harassment:

> *However, in my view the respondent's conduct toward the staff of the management office and members of the board of director's amounts to harassment and a remedy need to be fashioned to restrain it. The condominium corporation has the duty to manage the affairs of the corporation. That includes ensuring that its employees and directors are not being harassed in the course of duties.*

To put an end to the harassment, the trial court effectively created a restraining order which prohibited the owner from: (i) communicating with the board of directors or management staff other than in writing; (ii) coming within 25 feet of the property management head office; and (iii) restricting the manner in which the owner may make requests to access the corporation's records.

Although the owner successfully appealed and the Court of Appeal struck down the first two prohibitions on the basis that these restrictions were overly broad, the restriction regulating the manner in which the owner could access records of the corporation remained enforceable.

This case is instructive as the courts expressly recognized that condominium corporations have an obligation to keep their staff free from harassment. Although the judiciary has shown a willingness to control unruly parties, courts will show restraint and shall seek to control the harassment by way of a remedy that is minimally intrusive to the parties.

BILL 168 – NEW HEALTH AND SAFETY OBLIGATIONS

The second legal development is the tabling of Bill 168 on April 20, 2009 which proposes amendments to the *Occupational Health and Safety Act* ("*OHSA*") to place new obligations on employers, including condominium corporations, to take precautionary steps to keep employees free from workplace violence and harassment.

Bill 168 proposes the inclusion of obligations on an employer to develop reporting procedures for workers who have been subject to harassment in the workplace and a process for how the employer will investigate and deal with incidents of workplace harassment. The proposed amendments define 'workplace harassment' as "*engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought to be reasonably known to be unwelcome.*"

Similarly, Bill 168 proposes measures for an employer to take precautions to control 'workplace violence' which is defined as:

a) the exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury to the worker, or

b) an attempt to exercise physical force against a worker in a workplace that could cause injury to the worker.

A condominium corporation with five or more staff members will have to prepare a workplace violence prevention policy and review it annually. The policy must contain a means for assessing the risk of violence and reporting/investigation processes. Employees must also be given training about the policy.

Where an employee feels he or she is likely to be endangered by workplace violence, Bill 168 grants the employee the right to refuse to work and have the matter investigated by the condominium corporation and the Ministry of Labour. It is notable that there is no proposed right to refuse work where the employee feels subjected to 'workplace harassment'.

Most interesting for condominium corporations and property managers is Bill 168's inclusion of an obligation on an employer to take "every precaution reasonable in the circumstance for the protection of a worker" if the employer becomes aware or ought to reasonably be aware of a domestic violence risk to a worker. Within the condominium context domestic violence may arise in a myriad of situations and quite likely much more so than in traditional workplaces.

Bill 168 proposes that where an individual, such as an owner, tenant or guest has a history of violent behaviour, a condominium corporation or property manager may release personal information to the corporation's staff about the individual if that information is necessary to prevent the staff from being subject to harm. In the condominium context, the obligation to disclose personal information raises a number of considerations: how do corporations and property managers determine if a resident has a history of domestic violence; will residents have to be monitored to determine if a

threat exists; and how much personal information may be disclosed?

In many ways Bill 168 leaves us with more questions than answers. However, the one message Bill 168 makes clear is that condominium corporations and property managers will be under a heightened obligation to protect staff from work-place violence and harassment.

ENDNOTES

[1] *Sulz v. British Columbia (Minister of Public Safety and Solicitor General),* [2006] B.C.J. No. 3262 (British Columbia Court of Appeal) and Piresferreira v. Ayotte, [2008] O.J. No. 5187 (Ontario Superior Court of Justice).
[2] [2008] O.J. No. 3885 (Ont. Superior Ct. of Justice); varied [2009] O.J. No. 1785 (Ont. Court of Appeal).

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