



KEEPING CONFLICT OUT OF THE COURTS  
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The concept of preventative maintenance is one that many condominiums embrace. The notion of investing proactively rather than waiting and reacting can not only save cost, it can save time and uncertainty. Preventative maintenance need not be limited to physical property; it can apply to people in the community as well.

All too often, disputes emerge that could have been entirely avoided. When conflict escalates, it's not only the parties directly involved who are affected, but the community as a whole. A lack of harmony within the community may only be noticed by some at the outset, yet as conflict escalates, the financial and social costs are borne by all.

Conflicts between neighbours relating to noise are fairly commonplace in condominium communities. Many involved in such disputes question the degree to which they impact or should involve the condominium corporation. The recent case of *Dyke v. Metropolitan Toronto Condo. Corp. 972* concerned two unit owners quarrelling about this very issue as one owner's tenant used her dwelling unit as a dance studio to the displeasure of her neighbour, the owner residing in the unit below. The condominium corporation, through its duty to enforce, pursuant to Section 17(3) of the Condominium Act, was a reluctant third party – perhaps in this case, too reluctant. The court found that the condominium didn't do enough to address the issue and awarded punitive damages against it. The dispute cost the corporation almost \$60,000.

The Dyke case serves as a reminder that condominiums should not ignore problems brought to their attention, but what can communities do to address such issues?

### **Communicate**

Notwithstanding the close proximity of people in community, one should never assume that they communicate with one another. By way of example, it often comes to light that a unit owner and board have never met, or that a resident is uncertain if his or her concerns are even being heard. Reaction in the Twitterverse surrounding the recent decision of *York Condominium Corporation No. 345 v. Qi* included comments about communication – and what several felt was a lack thereof – between the parties. The matter of common expense collection ultimately resulted in \$35,767.73 in legal costs. Missed opportunities to communicate by both parties played a role in the escalation of costs in the Qi case. The condominium corporation was ultimately found to be responsible for and left to bear the brunt of these costs.

Dispute escalation can be prevented through the dispelling of assumptions and provision of opportunities to communicate. This can involve keeping the community informed through newsletters, a well-maintained website and notice boards; encouraging feedback through suggestion boxes, e-mail correspondence and community gatherings; and otherwise ensuring that anyone who expresses a concern is acknowledged and responded to in a timely manner. Communication is certainly a two-way street; however, condominium corporations can do their part to encourage contact from owners and residents by being proactive, receptive, responsive and accessible.

### **Educate**

A common cause of the escalation of condominium conflict is often a lack of understanding amongst those engaged in the dispute. A pet owner failing to realize that he or she has moved into a no-pet community; a unit owner who feels that the three-month limitation to register a condominium lien is discretionary to the board; a deck being installed without board approval or any idea of what Section 98 of the Condominium Act requires, *et cetera*. In the case of *Harvey v. Elgin Condominium Corp. No. 3*, a self-represented unit owner relied on his own views and interpretations of the law to require a three-day trial only to hear from the court that the bulk of his arguments failed at the outset because he lacked understanding.

Condominium corporations can help educate members of the community through welcome/information packages, raising awareness of the educational endeavours of associations such as the Canadian Condominium Institute and circulating articles from industry publications such as this. Question-and-answer columns written by industry experts for the media also help. So does taking advantage of the opportunity to ask questions and clarify points of law when a lawyer is brought in to chair the community's annual general meeting.

Many times, difficult discussions go far better than you expect and conflicts are more easily resolved in the early stages. Just as you should not ignore the problem, do not ignore your concerns about addressing it. Rather, take the time to ensure that you approach the situation appropriately.

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Marc brings unique insight in mediating condominium conflict through the knowledge and experience he has gained as a condominium director, resident and law clerk. His mediation practice is focused on condominium disputes.

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