



THE NATURE OF CONDOMINIUM DISPUTES  
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Imagine you are sound asleep in your bed only to be woken by a loud sound. You are tired – exhausted actually – and groggy. It takes you a little while to realize that you are not dreaming and this becomes clear to you as the noise persists. You toss, you turn, and miraculously, you eventually get back to sleep. You wake up without thinking anything of it. Until it happens again that very night...and every night that follows! By the end of the week, you feel like a zombie – while you have tried everything from soft music to ear plugs to drown out the noise, your body is feeling the effects of the disruptions in the night. This is affecting your work and your quality of life as you are irritable, grouchy and generally miserable. Truth be told, you are also offended that someone would cause such disruption in your life. You are angered by the lack of courtesy displayed by your new neighbour and have never been invaded like this in your own home. You know that you have to do something to make the noise stop.

Now, imagine that you are a young professional who made your first real step into adulthood by purchasing a condominium unit – the biggest investment of your life! Proud to be on your own and working long hours as you try to establish yourself in your profession, you invite a couple of friends over to have a beer and relax at the end of a long day. You are taking it easy, listening to music and enjoying a laugh – just what you needed to relax from the stresses of work – when all of a sudden there is a loud series of knocks on your door. You look at your friends, surprised, and proceed to answer the door. Greeting you is an older gentleman with a scowl on his face and aggressive tone in his voice. He accuses you of not being courteous to your neighbours, providing a few insults about your age and taste in music in the process, and demands that you cease disturbing him at once. You do not feel like you have done anything wrong – actually, you feel like you are the one who has been disturbed – and in an instant all of the pride and enjoyment that you had in your home is gone, replaced by a setting that reminded you of when you lived with your parents, only without the love, free food and car privileges. You contemplate if your neighbour has attempted to bully you and know that you have to do something to re-claim the enjoyment that you had in your property.

The above is but one example of the type of conflict that can emerge in a condominium environment. While the perspectives shared are essentially opposite sides of a coin, the predicament that each offended party finds themselves in is similar – they need to do something to change the status

quo. The question is, what should they do?

There are many options but few, if any, that will result in the problem going away anytime soon. Either the disrupted sleeper continues to be disrupted; the young professional continues to feel uncomfortable in his/her own home; or both. In a worst case scenario, the degree of noise heightens in an act of defiance and the disrupted sleeper's expressions of displeasure intensify or, as in the recent decision of *Dyke v. Metropolitan Toronto Condo. Corp.* 972, years go by and the condominium corporation gets hit with an award of damages against it totaling \$40,325.78, plus costs of \$19,500.00.

In the case of *Dyke v. Metropolitan Toronto Condo. Corp.* 972, a unit owner was disturbed by noise emanating from the unit situated above her. While the tenant causing the noise initially used her residence as a dance practice area, concern escalated when it became her full-time dance studio. Despite numerous complaints, security confirmation of the noise disturbance and several requests to do so from the unit owner, the condominium did not issue a letter to the tenant requesting that the noise cease and the court found that the condominium corporation "acted in unfair disregard of the Applicant's interests" by failing to adequately address the disturbance.<sup>[1]</sup>

The disrupted sleeper example set out at the outset of this article can play out in any number of ways. A letter may be issued to property management. A complaint logged by security. Police may be called. An expert brought in to examine the transmission of noise between units. Throughout the course of all this, allegations can be exchanged and ill will can intensify as the parties try to live close to one another.

The situation may be discussed at a monthly Board meeting, a letter issued by property management or the condominium corporation's solicitor and/or each party may even hire a lawyer. In a best case scenario, the ordeal ends with a letter. Problem solved, right?

Well, how about the relationship between the neighbours? Though I have not shared enough detail to allow one to decide who is "right" and who is "wrong" between the quarrelling parties, this question is not about that. Rather, it is about the health of the relationship of the neighbours continuing to live in community with one another. They are bound to run into each other every now and then...how will that affect them? Has the conflict truly been resolved?

This is where mediation can come in handy. Mediation provides a process whereby the disputing parties come together. They are given an opportunity to share their perspectives and examine the various alternatives available to them to address the issue. Alternatives that perhaps a court may not take into account when making a decision for the parties. A potential solution may be as simple as the location of the young professional's speakers or bringing in an acoustic engineer to uncover that there is a construction deficiency in the building. Even if the conflict continues beyond the mediation sessions, the neighbours may make progress in the course thereof to at least co-habitate more comfortably until the dispute is ultimately resolved. This may serve in de-escalating the conflict.

In the decision in respect of *Dyke v. Metropolitan Toronto Condo. Corp.* 972, it is mentioned that a mediation session was suggested in November 2011 and did not ultimately proceed as criminal charges were pressed against the tenant accused of causing the emanating noise. The Applicant moved out of

her unit in December 2011. In its decision rendered in January 2013, the court expressed hope that she would quickly be able to move back into it. With the benefit of hindsight, one can wonder if mediation may have avoided: (i) the Applicant moving out of her unit in the first place; and/or (ii) the laying of criminal charges. This case highlights the value of timing mediation appropriately.

Going back to the case of the disrupted sleeper, consider how the following additional information may impact the ultimate resolution of the matter and/or what resolution options could surface if such details came to light in the course of mediation proceedings:

- The disrupted sleeper is new to condominium living and expects to live in complete silence.
- The young professional has resided in his/her unit for a few years carrying out the same practice without incident.
- The young professional was deeply embarrassed by the disrupted sleeper knocking on his/her door and being abusive when they had company over. While the young professional recognizes that the noise was excessive that evening, he/she is now actively making noise to spite the disrupted sleeper.
- The young professional has recently been offered the opportunity to switch his/her working hours to the night shift.
- The disrupted sleeper has recently become a widower and is suffering from loneliness. The laughter between friends is more troublesome to him than the music.
- The music that the young professional is playing contains foul language which the disrupted sleeper finds offensive.

[1]*Dyke v. Metropolitan Toronto Condo. Corp. 972* is available at <http://canlii.ca/t/fvsg1>

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Marc actively manages condominium conflict and advocates for mediation in the early stages of condominium disputes. He earned an Honours Bachelor of Arts at the University of Toronto (Trinity College), holds an Executive Certificate in Conflict Management from the University of Windsor Faculty of Law and is a member of the ADR Institute of Ontario, the ADR Institute of Canada, the Toronto & Area Chapter of the Canadian Condominium Institute, the Association of Condominium Managers of Ontario and the Institute of Law Clerks of Ontario.

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 exclusively on condominium disputes.

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