

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** June 16, 2023

**CASE:** 2022-00255N

**Citation:** York Condominium Corporation No. 444 v. Ryan, 2023 ONCAT 81

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Laurie Sanford, Member

**The Applicant,**

York Condominium Corporation No. 444

Represented by Natalia Polis, Counsel

**The Respondent,**

Joanne Ryan

Represented by David Costa, Counsel

**Hearing:** Written Online Hearing – February 13, 2023 to May 29, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Joanne Ryan is a unit owner in York Condominium Corporation No. 444 (“YCC 444”). She lives across the hall from Christine Powell, a smoker. While smoking inside YCC 444 units is not prohibited, the rules of YCC 444 do prohibit the transmission of smoke from one unit to another if the smoke or odour is an annoyance, nuisance or disruption to other owners. YCC 444 originally brought this application against both Ms. Ryan and Ms. Powell. However, YCC 444 has settled its dispute with Ms. Powell on terms that include the obligation of Ms. Powell to use reasonable efforts to prevent tobacco smoke and/or odours from being transmitted from her unit into the common elements or into other units.
- [2] YCC 444 continued its application against Ms. Ryan, claiming that Ms. Ryan has been creating a nuisance and acting in a manner that disrupts the comfort and quiet enjoyment of other residents in violation of the *Condominium Act, 1998* (the “Act”) and of YCC 444’s governing documents. YCC 444 also alleges that Ms. Ryan has been harassing Ms. Powell and her family as well as members of YCC 444’s staff. Ms. Ryan does not deny the actions and speech attributed to her. It is her position that what she has said and done is an appropriate response to a serious risk to the health of herself and her daughter from the smoke and odour she believes is coming from Ms. Powell’s unit across the hallway and into her unit. Ms. Ryan says she was compelled to take the action she did because of the ongoing health threat and in the face of a persistent failure on the part of YCC 444

to take action to protect her.

- [3] For the reasons set out below, I find that Ms. Ryan has consistently and for an extended period, harassed Ms. Powell and her children and the management and staff of YCC 444. In the course of this, her conduct constituted a nuisance, annoyance or disruption. While I believe that Ms. Ryan genuinely feels threatened by the smoke and odour she alleges is coming from Ms. Powell's unit, she has chosen a completely inappropriate course of action to deal with it.
- [4] Both parties claimed significant costs. As will be set out below, I conclude that YCC 444 should be awarded the amount of \$200 for its Tribunal filing fees, \$8,077.50 plus HST for its costs of eliciting compliance with the Act and its governing documents and the amount of \$1,000 plus HST for its legal costs of bringing this Application.
- [5] I was assisted in this decision by the numerous cases cited by the parties and the various submissions made by them. While I have reviewed the cases and submissions, I will only refer to those which bear directly on my decision.

## **JURISDICTION**

- [6] YCC 444's primary allegations are that Ms. Ryan has been shouting insulting remarks to Ms. Powell and writing emails denigrating YCC 444's condominium manager and supervisor on-site. YCC 444 initially expressed the dispute as concerning a nuisance, annoyance or disruption. In closing submissions, both parties framed the dispute as relating to the alleged harassment of Ms. Powell and certain of the YCC 444 staff by Ms. Ryan. Harassment is not a prescribed nuisance over which the Tribunal has jurisdiction. Accordingly, I requested further submissions from the parties as to the Tribunal's jurisdiction to address the issue of harassment in this case.
- [7] Section 117 deals with certain prohibited activities or conduct. It reads:
- 117(1) No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.
- 117(2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,
- (a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation;  
or
- (b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

- [8] The “other prescribed” nuisances, annoyances and disruptions in subparagraph 117(2)(b) are set out in section 26 of Ontario Regulation 48/01 as odour, smoke, vapour, light and vibration.
- [9] The jurisdictional issue in this case stems from the fact that YCC 444’s allegations do not fit neatly into the provisions of the Act. If YCC 444 is restricted to the prescribed nuisances in the Act and Regulation 48/01, it can only proceed against Ms. Ryan for the nuisance of “noise”. YCC 444’s complaint is only partly about the alleged volume at which Ms. Ryan is speaking, that is, the noise. The complaint is more about what she is alleged to have been saying. The content of speech is not a prescribed head of nuisance in the Act. YCC 444 also complains about the allegedly derogatory emails that Ms. Ryan has been writing. Again, this is not a prescribed head of nuisance, annoyance or disruption. Nor are the allegations made by YCC 444 that Ms. Ryan is engaging in other disruptive behaviour such as hanging sheets over her door, leaving her door open, putting up derogatory messages on Ms. Powell’s door, defacing a poster put up by Ms. Powell’s children and following Ms. Powell and her children and shouting disturbing abuse at her. YCC 444 alleges that this conduct is part of a concerted campaign of harassment or disruption against Ms. Powell. YCC 444 wants to pursue these allegations against Ms. Ryan under its governing documents as well as under subsection 117 (2).
- [10] Subsection 1 (1) (d) of Ontario Regulation 179/17 extends the scope of the Tribunal’s jurisdiction to include disputes with respect to provisions of a condominium corporation’s governing documents “that prohibit, restrict or otherwise govern” either the activities in subsection 117 (2) or section 26 of Regulation 48/01 or “any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation”. There is an exception to these provisions. Subsection 1 (3) of the regulation states that these provisions “do not apply to a dispute that is also with respect to subsection 117 (1) of the Act”.
- [11] To determine whether the exception in subsection 1 (3) applies, it is helpful to consider how courts have interpreted what is now section 117 (1). Prior to January 1, 2022, when the Tribunal assumed jurisdiction over the prescribed forms of nuisance, annoyance or disruption, section 117 of the Act stated:
- 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.
- [12] This earlier version of section 117 (1) was interpreted by the Superior Court of Justice in several cases as including psychological harm. For example, the case of *Toronto Standard Condominium Corporation No. 2395 v Wong*, 2016ONSC 8000(CanLII) dealt with a situation in which the Respondent had escalated a pattern of abusive and harassing behaviour to the point where the court found it was “now threatening and dangerous”. Most of the cases cited by the parties

included an element of real or likely physical or psychological injury or possible damage to property. However, the case of *York Condominium Corporation No 163 v Robinson*, 2017 ONSC 2419 (CanLII), found that harassing conduct and verbal and written forms of abuse which fell short of physical threat was nevertheless addressed in section 117. The question is whether this is still the case today. That is, does harassment that is not likely to “damage the property or the assets or to cause an injury or an illness to an individual” still fall under the scope of subsection 117 (1) and therefore beyond the jurisdiction of the Tribunal.

- [13] The amendments of section 117 and the addition of Regulation 179/17, which established the Tribunal’s jurisdiction to deal with certain nuisances, annoyances or disruptions, have created a potential overlap between the conduct addressed in sections 117 (1) and 117 (2) of the Act. Considering harassment in particular, it can be both a tactic or form of conduct and it can also be an end. For example, a person may attempt to harass by engaging in conduct that is a nuisance or annoyance or disruption. In that case, if the conduct falls within subsection 117 (2) or subsection 1 (1) of Regulation 179/17, then the Tribunal would have jurisdiction over the dispute. Looking at the wording of the two subsections, the dividing line is the likelihood of physical injury, illness or damage to property. Subsection 117 (1) is designed to deal with conditions and conduct that are likely to have more serious consequences than a nuisance, annoyance or disruption.
- [14] YCC 444 submits that harassment is, by definition, a form of nuisance, annoyance or disruption and therefore covered either by subsection 117 (2) or by provisions in YCC 444’s governing documents, which will be considered below. YCC 444 refers to several dictionary definitions, including the Cambridge Dictionary, which defines harass as “to continue to annoy or upset someone over a period of time”. However, the Oxford Dictionary of Current English defines harass as “1) trouble and annoy continually and 2) make repeated attacks on”. I conclude that harassing someone may involve conduct which is a nuisance but it may also go further and involve attacks. For example, sexual harassment often goes well beyond mere nuisance or annoyance.
- [15] By contrast, Ms. Ryan appears to suggest, in her submissions, that Ms. Powell has failed to demonstrate emotional injury and therefore has failed to show harassment. Considering the dictionary definitions, harassment does not necessarily involve injury. It should also be noted that the types of nuisances, annoyances or disruptions contemplated both under subsection 117 (2) of the Act and under subsection 1 (1) of Regulation 179/17 do not require proof of emotional or physical injury.
- [16] I conclude that harassment can include conduct that is a nuisance, annoyance or disruption. While harassment is not a prescribed and prohibited activity under subsection 117 (2), harassing conduct may be prohibited in the governing documents of a condominium. Depending on the wording of the provision and the actual conduct in issue, the conduct may fall within the Tribunal’s jurisdiction.

[17] YCC 444 relies on multiple rules in this case. The ones which are relevant to the dispute are Rules B.5, B.6, B.8, C.2, D.9, and D.11, which are set out below. It is possible to parse these rules and attempt to determine whether individual words, phrases or sentences would suggest more serious conduct covered by subsection 117 (1) or activities that are nuisances, disturbances or annoyances or an entirely unrelated activity. However, the dispute between the parties is not over the wording of the rules but the conduct of Ms. Ryan. The rule relied on must address activities that are nuisances, disturbances or annoyances or the matter is potentially outside the Tribunal's jurisdiction. Beyond that, it is not necessary that the rule use those specific words. It is sufficient if it is found that Ms. Ryan's conduct: a) violates the rule and b) is in fact and law a nuisance, annoyance or disruption. In considering Ms. Ryan's conduct, these are the criteria I will apply to determine not only the Tribunal's jurisdiction but also whether Ms. Ryan's conduct is in fact a nuisance, annoyance or disruption.

## **B. ISSUES & ANALYSIS**

[18] The remaining issues in this matter may be summarised as follows:

1. Has Ms. Ryan's behaviour breached the Rules of YCC 444?
  - i. If so, does the behaviour constitute a nuisance, annoyance or disruption?
2. Has Ms. Ryan's behaviour breached subsection 117 (2) of the Act?
3. If Ms. Ryan's behaviour has violated either the Rules of YCC 444 or subsection 117 (2) of the Act, and is a nuisance, annoyance or disruption, what remedy should be ordered?
4. Should there be an award of costs?
  - i. If so, in what amount?

### **Issue 1 – Has Ms. Ryan's behaviour breached the Rules of YCC 444? If so, does the behaviour constitute a nuisance, annoyance or disruption?**

[19] One of the unusual features of this case is that Ms. Ryan does not deny the actions, speech and behaviour that are attributed to her. In her closing statement, she did not address her speech but in her testimony and in emails written by her which formed part of the evidence, she acknowledges what she said. In her telling, she has noticed smoke and masking air freshener coming from Ms. Powell's unit since March, 2021. After trying to discuss this with Ms. Powell and attempting to enlist the help of YCC 444, Ms. Ryan resorted to various means of attempting to, in her words, "inform and curb Ms. Powell's additive behaviour". There is some disagreement about when these attempts started but I accept the evidence of Ms. Ryan's emails that they began in May, 2021. She would shout "knock it off" from the hallway between her unit and that of Ms. Powell's. Sometimes, she would

shout “knock it off you psycho” or “knock it off Christine”. Standing either in the hallway or in her doorway, she loudly and repeatedly labelled Ms. Powell “trailer trash”, “idiot”, “stupid”, “stupid bitch” and “disgusting”. Ms. Powell testified to sixty-two times between May, 2021 and October, 2022 when Ms. Ryan has shouted or made inappropriate remarks and gestures to her. Ms. Ryan’s testimony suggests that at times Ms. Powell returned the gestures.

- [20] Ms. Ryan’s attempts to convey her displeasure with Ms. Powell went beyond shouting insults. According to Ms. Powell’s testimony, which is not denied by Ms. Ryan, in July, 2021, Ms. Ryan posted several notices on Ms. Powell’s door. One read, “Second-hand smoke is a health hazard how many times do you need to be told that?”. Several of the notices were addressed to other people besides Ms. Powell, including the condominium manager of YCC 444, the police and the Children’s Aid Society. One of these read, “I do not think this woman is of sound mind and she parents two young daughters, one of whom is obese.” There is no evidence that this notice was delivered to any of the other named recipients. When asked by YCC 444 to desist, Ms. Ryan replied on July 12, 2021:

This is my notice to you that I will post whatever I wish on the door of someone who is NOT complying with the Corporation’s Rules and threatening the health of my daughter and that of other residents, including but not limited to, enjoyment of the units for which we pay.

- [21] Also in July, 2021, according to Ms. Powell, when her children advertised their baby-sitting services on one of YCC 444’s bulletin boards, Ms. Ryan posted a notice beside the advertisement, reading:

FACT: These two girls come from a smoker’s home. When I objected to the amount of 2<sup>nd</sup> hand smoke entering my unit from theirs, this mother called the police and subjected my lung-damaged child to COVID-19 during quarantine. She continues to smoke in her unit without care how she affects my child. Is this who you want looking after your children? HIRE AT YOUR OWN RISK

- [22] In August, 2021, Ms. Powell returned home from vacation and found a letter posted on her door which read:

Thank you for making this entire hallway smell like an ashtray Saturday. You are such a gem – harassing people online, telling them they need to present a solution. How about this Chrissy. How about you stop subjecting the 5<sup>th</sup> floor to your deadly second hand smoke? Enough is enough. Sanctimonious hypocrite. JUST STOP.

- [23] In April, 2022, Ms. Ryan followed Ms. Powell and her children down the hall several times shouting things like, “I am going to get you, Christine” and “I’m going to catch you Christine.” “Stay away from my door, do not touch it.” “This is police approved, you better watch out.”

- [24] At some point, Ms. Ryan began propping the door to her unit open at times and, at times, hanging a sheet over the front of the door. YCC 444 alleges that this is a fire

and safety risk. On one occasion, on April 19, 2022, the on-site supervisor of YCC 444 reported seeing a letter on Ms. Ryan's door saying that she intended to leave her door propped open, saying "I am going to identify her as the cause of the smoke migration it's the last thing I do". The notice went on to explain that her daughter has medical conditions which were "dangerously exacerbated" by second-hand smoke.

- [25] This is not an exhaustive list of Ms. Ryan's words and conduct but it exemplifies them. Ms. Ryan has also made her displeasure with the condominium manager and the on-site supervisor known through regular emails. At various times she has referred to each of these individuals as a "man-child", questioned their maturity, intelligence, educational level and their competence. For example, on January 23, 2022, Ms. Ryan emailed YCC 444's lawyers, a police officer and a member of the YCC 444 Board in response to a suggestion that she report incidents of smoke to the on-site supervisor, "So I'm supposed to call Brett over – the guy who couldn't find a mound of shredded meat in front of his face. Sure. Great plan." The condominium manager's testimony was that Ms. Ryan's "incessant emails" which continued multiple times a day at times are impacting his ability to manage the property effectively. Ms. Ryan persisted in copying YCC 444's lawyers and a local police officer on many of her emails despite being asked to stop contacting the lawyers to keep costs down.
- [26] From Ms. Ryan's perspective, her actions are appropriate in the face of what she sees as a significant health risk from second-hand smoke to her and her daughter. Both of them suffer from medical conditions which make them particularly susceptible to effects of smoke. Additionally, Ms. Ryan's daughter has medical conditions that multiply the stress she feels from the tense relations between Ms. Ryan, Ms. Powell and the management of YCC 444. Ms. Ryan also points to what she sees as YCC 444's lack of effective action in dealing with the smoke she experiences as justification for her words and actions.
- [27] Ms. Ryan makes no apology for her words or conduct. For example, she wrote to numerous people, including YCC 444's lawyers on February 6, 2022, "I have yelled out the door and don't give a rat's behind what you think of that. I will continue to do so until you do something." On May 29, 2022, Ms. Ryan wrote to YCC 444's lawyers, among others, "I have yelled at her to stop smoking and I do NOT regret it."
- [28] Ironically, it is not clear whether the smoke that Ms. Ryan experiences is coming from Ms. Powell's unit. On more than one occasion, including on February 26, 2022, Ms. Ryan complained of smoke all day. However, YCC 444 was able to confirm that Ms. Powell was at work at the time. YCC 444 assumes that the unit was vacant that day. On another occasion, Ms. Powell was on vacation and not in her unit at the time Ms. Ryan complained of smoke migration. Unfortunately, on a number of occasions when Ms. Ryan shouted her abuse at Ms. Powell's door, Ms. Powell was not at home but her children were.

[29] YCC 444 has taken a number of measures in response to Ms. Ryan's complaints. Its on-site supervisor routinely visited the hallway between the units of Ms. Ryan and Ms. Powell after receiving a complaint but could smell no smoke. YCC 444 did two smoke tests in response to Ms. Ryan's complaints, in the fall of 2021 and again in the spring of 2022. The first test showed that smoke from Ms. Powell's unit was penetrating an adjoining unit but the test found no evidence of smoke being transferred from Ms. Powell's unit to the hallway that separates Ms. Powell's unit from Ms. Ryan's. Remedial action was taken by YCC 444 and the second test found no smoke migration. YCC 444 has several times requested permission to enter Ms. Ryan's unit and conduct testing there. YCC 444 takes the position that Ms. Ryan has denied them permission. Ms. Ryan disputes this and says that she has merely insisted that she be present during the test. On reviewing the emails Ms. Ryan sent in response to requests to test in her unit, and her submissions, it seems that in one instance, Ms. Ryan understood that testing in her unit would be at her expense and it was on those grounds that she refused access. On one other occasion, she is quoted by the YCC 444 lawyers as writing that she failed "to see the point of any air quality test at that time". I conclude that Ms. Ryan effectively refused access to her unit to conduct smoke testing. Reading her comments at various times, it is possible that a reason for her refusal of access was her fear of the Covid-19 virus.

[30] During the period from July, 2022 to October, 2022, YCC 444 stationed security cameras and security personnel on the 5<sup>th</sup> floor. In a letter to residents dated October 3, 2022, YCC 444 stated that the reasons for this measure were:

(1) to investigate and verify allegations of cigarette smoking/smoke odour migration and the migration of noxious amounts of air-freshener as well as to investigate and verify allegations of harassment and inappropriate conduct, and (2) in other [*sic*] to ensure the safety and security of some residents who made allegations of harassment and inappropriate conduct.

[31] Ms. Ryan objected to this measure on the grounds: first that Ms. Powell appeared to have stopped smoking in her unit and secondly, that it was a waste of money. However, after the security guards were in place, Ms. Ryan did have conversations with them in which she alleges that they reported faint tobacco smells and smoke-masking fragrance smells. She takes this as confirmation of her conviction that Ms. Powell's second-hand smoke is penetrating the hallway and her unit. The condominium manager testified that "generally, security was unable to detect any traces of tobacco smoke and/or odours on the 5<sup>th</sup> floor". These two versions of events are not inconsistent. It is possible that on occasion the guards did detect faint odours but that generally, they did not. The faint odours that were reported were a far cry from the smoke that Ms. Ryan on occasion has reported as "wafting" from Ms. Powell's door.

[32] YCC 444 made repeated efforts to have Ms. Ryan stop her activities. Its lawyers have written six letters to Ms. Ryan or her lawyer and several emails in the period from October 1, 2021 to August 9, 2022. In one of the early letters, on November



8, 2021, YCC 444 requested a virtual meeting to discuss matters. Ms. Ryan refused on the grounds that she is clinically deaf. However, as YCC 444 lawyers noted in a subsequent letter, the video-conference platform they proposed using offers live transcripts. There have been other attempts by YCC 444 both directly and through its lawyers to insist that Ms. Ryan stop approaching Ms. Powell directly and instead follow its escalation procedures. These have been unsuccessful and have been met with defiance by Ms. Ryan.

[33] I conclude that very shortly after Ms. Ryan first noticed smoke which she thought was coming from Ms. Powell's unit, in March, 2021, she gave up on attempts to resolve the matter peaceably and began a campaign of harassment in an attempt to either get Ms. Powell to stop smoking or to enlist the help and support of YCC 444 management in stopping the behaviour. It is unclear why Ms. Ryan thought that a constant stream of abuse, insults and sarcasm would persuade Ms. Powell to change her behaviour or encourage YCC 444 management to greater efforts to protect her and her daughter. However, once she was locked into that pattern of conduct, she seemed unable to stop. Any effort to engage her in constructive efforts to solve the problem were resisted and warnings to stop her behaviour were ignored. It seems clear that Ms. Ryan genuinely fears for the health of herself and her daughter, genuinely believes that Ms. Powell is the source of the danger and sincerely believes that YCC 444 is unable or unwilling to assist. However, she has chosen a catastrophically ill-advised method of dealing with her problem.

[34] As noted above, YCC 444 alleges that Ms. Ryan's conduct violates several of its rules. These rules include the following:

B.5 No one shall injure, harass, threaten, annoy, or initiate any defamatory, threatening, hateful or discriminatory statement or action, or participate in any illegal activity or harmful conduct toward any Owner, Resident, Board member, Manager, employee of the Corporation or the Manager, or contractor retained by the Corporation. Harassment consists of any verbal or written statement, action, or behaviour which is intimidating, threatening, violent or which causes physical or psychological harm, fear, humiliation or embarrassment, objectively determined on a reasonable basis, including any statement, action or behaviour which a person knows or reasonably ought to know would be unwelcomed and offensive, including, without limitation, any verbal abuse, insulting comment, joke, gesture, conduct or touching or which would constitute workplace harassment or sexual harassment.

B.6 No one on the property shall act in a manner that is unmanageable, rude, disruptive, aggressive, abusive or anti-social in nature.

B.8 No one shall interfere with, hinder or impede the Board or the Manager from carrying out the Corporation's duties and obligations under the Act, the Declaration or By-laws of the Corporation, or any agreement to which the Corporation is a party.

C.2 No one shall create or permit the creation or continuation of any noise, odor or other nuisance which, in the opinion of the Board or the Manager, does or may

disturb, annoy or interfere with the comfort or quiet enjoyment of the units or common elements by other Owners and/or Residents. No one shall obstruct or interfere with the rights of any Owner

- [35] Two additional Rules are relevant. The first of these is Rule D.9 which prohibits signs or notices placed inside YCC 444 without the consent of the Board. Rule D.11 prohibits “articles, fixtures or doormats” from being placed at individual doorways to any unit.
- [36] Some of the wording of Rule B.5 appears to contemplate the type of serious, threatening and potentially violent conduct addressed in subsection 117 (1). However, as noted above, the dispute is about Ms. Ryan’s conduct. Ms. Ryan’s conduct has been harassing and annoying and is a cause for concern. However, I do not find it rises to the level of causing or threatening physical or psychological harm, “objectively determined on a reasonable basis”. Ms. Ryan at some level ought to have known that her comments would be “unwelcomed and offensive” and would constitute “verbal abuse”. Her conduct might also be described under Rule B.6 as unmanageable, rude or disruptive. Her comments tend towards the sarcastic, demeaning and abusive rather than towards violent threats. The comments that Ms. Ryan shouted at Ms. Powell in April, 2022 as she followed Ms. Powell and her children down the corridor were completely unacceptable and doubtless distressing for Ms. Powell’s children to hear. However, when taken in the context of her other actions, I believe that they should be interpreted as meaning that Ms. Ryan was going to expose Ms. Powell as the source of the smoke migrating into her unit rather than that Ms. Ryan was planning a physical assault on Ms. Powell. I find that Ms. Ryan has violated Rule B.5 but has not injured or threatened violence. There is a better correlation between Ms. Ryan’s conduct and the wording of Rule B.6, which I find that Ms. Ryan has repeatedly violated.
- [37] Rule C.2 deals with “noise, odor or other nuisance which . . . . does or may disturb, annoy or interfere with the comfort or quiet enjoyment of the units or common elements by other Owners and/or Residents.” I see no reason to interpret this Rule narrowly and do not read the phrase “other nuisance” as limited by the examples of noise and odor given. I think the better interpretation is to consider “other nuisance” broadly provided they are nuisances in law which do or may disturb, annoy or interfere with the comfort or quiet enjoyment of other owners. For the reasons discussed below, I conclude that Ms. Ryan has violated this rule.
- [38] Ms. Ryan’s habit of fixing a sheet over the exterior of her door is a violation of Rule D.11. Leaving her door open permitted Ms. Ryan to shout from within her unit, as she did on multiple occasions. Hanging the sheet over the front of her door can be considered to be disruptive and anti-social under Rule B.6. The notices she posted outside her door and Ms. Powell’s door are a violation of Rule D.9 as well as Rules B.5 and B.6. Her stream of derogatory emails about the management of YCC 444 is a violation of Rules B.5 and B.6. The condominium manager testified that the

constant emails she has been sending is interfering with his ability to do his job. I accept that, having reviewed the content and frequency of the emails, and conclude that Ms. Ryan is also in violation of Rule B.8.

- [39] Having determined that Ms. Ryan is in violation of Rules B.5, B.6, B.8, C.2, D.9 and D.11, it is necessary to determine if Ms. Ryan's prohibited conduct is in law a nuisance, annoyance or disruption. YCC 444 has restricted its Rule C.2 to nuisances. However, the wording in Rule B. 5 includes conduct which is annoying and Rule B.6 includes conduct which is disruptive. Since Ms. Ryan's conduct has violated all three of these rules, the consideration is whether Ms. Ryan's conduct qualifies as a nuisance, annoyance or disruption.
- [40] YCC 444 submits that Ms. Ryan has embarked on a campaign of harassment and all of her activities must be viewed as part of that campaign. Thus, while hanging a sheet over her door might not rise to the level of nuisance as an isolated act, in YCC 444's submission, it should be viewed as part of a pattern of conduct that is.
- [41] Ms. Ryan submits that her conduct is not a nuisance, annoyance or disruption. It is, rather, an exercise in free speech that seeks to warn YCC 444 of the dangerous acts of non-compliance being carried out by Ms. Powell with her smoking and to encourage Ms. Powell to amend her behaviour. Ms. Ryan argues that it is in fact YCC 444 and Ms. Powell who are carrying on activities that are a nuisance, annoyance or disruption.
- [42] YCC 444 cites the case of *Carleton Corporation No. 132 v. Evans*, 2022 ONCAT 97. In that case, the governing documents of the condominium did not include a definition of nuisance. The Tribunal found, at paragraph 20, that in the absence of a definition:
- . . . . it is instructive to consider the well-established jurisprudence on the law of nuisance. To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.
- [43] Ms. Ryan's persistent verbal and written abuse go well beyond a trivial interference. Her shouted insults have been frequent and extended over many months. Her continuous stream of complaints and demeaning and insulting emails about the management of YCC 444 have interfered with the condominium manager's ability to do his job. I find that Ms. Ryan's verbal and written abuse are in violation of YCC 444's Rules, including Rule C.2, and constitute a nuisance.
- [44] Ms. Ryan's behaviour in posting notices not only on her door but on Ms. Powell's door and on the common bulletin board, are part of a pattern of behaviour that was designed to annoy and disrupt Ms. Powell and the management of YCC 444 and to interfere with Ms. Powell's quiet enjoyment of her unit. The Oxford Dictionary of Current English defines the word "annoy" as: "1 (often in passive) anger or distress slightly . . . 2. molest, harass". Disrupt is defined as: "1. interrupt the continuity of;

bring disorder to. 2. break apart". I conclude that Ms. Ryan's actions in posting notices are, both alone and, when considered in the context of her overall campaign of harassment, are an annoyance and a disruption.

[45] Ms. Ryan's habit of hanging sheets from her door and leaving her door open may constitute a safety hazard as YCC 444 submits but that is not a matter within the Tribunal's jurisdiction. However, by posting a notice on the sheet explaining that she was going to trace the smoke, and by writing to the management of YCC 444 explaining that she was doing this in response to the smoke she was experiencing, Ms. Ryan has tied this conduct in with her other activities. Within that context, this conduct constitutes an annoyance.

[46] Ms. Ryan's submission that her actions are an exercise in free speech ignores the fact that the communal nature of condominium living requires some compromises. Condominium rules must be complied with for the good of the overall community. Ms. Ryan may not rely on her rights of freedom of speech to excuse the nuisance, annoyance and disruption she has created.

### **Issue 2 - Has Ms. Ryan's behaviour breached subsection 117 (2) of the Act?**

[47] As noted above, under subsection 117 (2), YCC 444 is restricted to a complaint about the noise that Ms. Ryan has been making in yelling her insults. One neighbour, who lives at the other end of the hall from Ms. Ryan, did testify to the sound of shouting even though she could not make out the words. Ms. Powell also testified to the volume of Ms. Ryan's voice in yelling her insults. Indeed, Ms. Ryan herself wrote that she had yelled and shouted.

[48] In closing submissions, Ms. Ryan said it would be impossible for her to shout as she is clinically deaf. This is a submission at odds with Ms. Ryan's own descriptions of what she is doing. Her shouted insults were frequent and extended over months. I find that Ms. Ryan has created a noise nuisance under subsection 117 (2) of the Act.

### **Issue 3 – What remedy should be ordered?**

[49] YCC 444 requests that I order the following:

1. That Ms. Ryan comply with subsection 117 (2) of the Act and with Rules B.5, B.6, B.7[sic], C.2, D.9 and D.11;
2. That Ms. Ryan cease and desist from all communications to and/or with Ms. Powell and her children, whether written or verbal, unless such communications are cordial and welcomed;
3. That Ms. Ryan cease and desist from yelling, shouting, screaming or making any inappropriate, defamatory, or disparaging remarks or gestures at Ms. Powell and/or her children, whether outside Ms. Powell's unit or if otherwise crossing paths with Ms. Powell and/or her children;

4. That Ms. Ryan cease and desist from making inflammatory, harassing, abusive or threatening statements to YCC 444's staff, including the condominium manager and the supervisor on-site, whether in writing or verbally; and
5. That Ms. Ryan cease and desist from placing any articles or fabric whether towels, sheets, blankets or otherwise, on her unit door and/or draped on her unit door.

[50] As YCC 444 notes, the Tribunal has a range of orders available to it after a hearing. One of these orders, under Subsection 1.44 (1) 2 empowers the Tribunal to order parties to take or refrain from taking "a particular action". Under this subsection, I will direct that Ms. Ryan bring herself into compliance with subsection 117 (2) of the Act and into compliance with YCC 444 Rules B. 5, B.6, B.8, C.2, D.9 and D.11.

[51] While that might be sufficient in many cases, considering Ms. Ryan's intransigence in the face of earlier attempts to have her follow the rules, more specificity is required. I will order Ms. Ryan to cease and desist in that conduct which I have found to be a nuisance, annoyance or disruption, specifically, the nuisance of noise under subsection 117 (2), the verbal and written abuse to which she has subjected Ms. Powell, her children and the management of YCC 444, in particular the condominium manager and the on-site supervisor, the posting of abusive and insulting notices on Ms. Powell's door and on a common element bulletin board of YCC 444 and the hanging of sheets over her front door and posting notices on the sheet or front door.

[52] YCC 444 also requests that I order Ms. Ryan to stop all communications, oral or written, with Ms. Powell or her children "unless such communications are cordial and welcome". Leaving aside the unlikelihood that communications between Ms. Ryan and Ms. Powell will be cordial in the foreseeable future, I question whether under the circumstances of this case, I have the jurisdiction to limit all speech between Ms. Ryan and Ms. Powell. I think it will be sufficient to order Ms. Ryan to bring herself into compliance with YCC 444's rules and with the Act.

#### **Issue 4 – Should there be an award of costs and if so, in what amount?**

[53] In addition to the requested orders, discussed above, YCC 444 claims its costs under four headings, as follows:

1. A reimbursement of its fees paid to the Tribunal in the amount of \$200;
2. A reimbursement of its costs of pre-Application attempts to obtain Ms. Ryan's compliance with its Rules and with the Act;
3. A reimbursement of its costs of retaining security "as a result of the Respondent's conduct"; and

4. A reimbursement of its costs of this Application.

- [54] Under Rule 48.1 of the Condominium Authority Tribunal's Rules of Practice, effective January 1, 2022 (the "CAT Rules"), the successful party is customarily awarded a reimbursement of its Tribunal filing fees, which in this case are in the amount of \$200. This cost will be paid to YCC 444 by Ms. Ryan
- [55] Attempts to obtain compliance with a condominium corporation's governing documents are within the jurisdiction of the Tribunal under subparagraph 1 (1) (d) (iv) of Regulation 179/17, "provisions that govern the indemnification or compensation of a corporation regarding a dispute described in this clause," which includes the dispute in this case. Costs are awarded under subparagraph 1.44 (1) 4, which authorises the Tribunal to direct "a party to the proceeding to pay the costs of another party to the proceeding."
- [56] To support its claim for its pre-Application costs of eliciting compliance, YCC 444 relies on the indemnification provisions in its governing documents. Article X of the Declaration provides:

Each owner shall indemnify and save harmless the corporation from and against any loss, costs, damage, injury or liability whatsoever which the corporation may suffer or incur resulting from or caused by an act or omission of such owner, his family or any member thereof, any other resident of his unit or any guests, invitees or licencees of such owner or resident to or with respect to the common elements and/or all other units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the corporation. All payments pursuant to this clause are deemed to be additional contributions towards the common expenses and are recoverable as such.

Article 10.1 of the Corporation's General Operating By-law No. 4 provides, in part:

The contravention of any provisions of the Act, Declaration, by-laws and/or rules of the Corporation, shall give the Board, subject to its duty to act reasonably, in addition to any other rights set forth in the Act and the Declaration, the right to:

- (d) deem all costs incurred by the Corporation pursuant to Article 10 to be common expenses attributable to the unit and collected in the same manner as common expenses.

Article 10.4 of the General Operating By-Law No. 4 also provides, in part:

(c) each owner shall indemnify and save the Corporation harmless from and against any and all claims, damages, losses, liabilities and/or costs, which the Corporation may suffer or incur resulting from, or caused through an act or omission by the owner, or any person, thing or animal for whom or for which the owner is legally responsible including, but not limited to:

- (ii) all legal costs and disbursements on a substantial indemnity basis; and

(iii) all costs incurred by the Corporation:

(A) To redress, rectify and/or obtain relief from injury or damage;

(B) By reason of a breach of the Act, Declaration, by-laws and/or any rules of the Corporation in force from time to time; and/or

(C) In relation to the enforcement of any rights or duties pursuant to the Act, the Declaration, the by-laws, and/or the rules of the Corporation;

(D) All amounts for which the unit owner is responsible pursuant to this Article 10.4 shall form part of the contributions to the common expenses payable for the particular unit.

Rule B.3 provides as follows:

Any losses, costs or damages incurred by the Corporation (including, without limitation, legal costs) by reason of a breach of the Act, or the Declaration, Bylaws and Rules or by reason of any litigation against the Corporation without obtaining a judgment against the Corporation, by any Owner and/or Resident, or by the respective family members, tenants, guests, invitees, employees or agents of the Owner and/or Resident or any of the foregoing shall be borne and paid for by such Owner of the unit and shall be deemed to be additional contributions towards the common expenses payable by such Owner and shall be recoverable as such.

[57] The combination of these provisions clearly entitles YCC 444 to claim reimbursement for its costs of attempting to enforce compliance with the Act and with its governing documents. Concerning YCC 444's claim to its costs of this Application, under Subsection 1.44 (2) of the Act, those costs are governed by the CAT Rules, which will be considered below.

[58] YCC 444 divides its costs claims into two categories, "Pre-CAT Costs" and "Costs incurred during Application". The costs are by docket entry. Considering first the pre-CAT Costs, what is relevant in determining whether the costs are for the purpose of compelling compliance is not when the costs were incurred but what they were for. So, for example, some of the costs appear to have been incurred not for eliciting Ms. Ryan's compliance with the Act and YCC 444's governing documents but for testing and responding to the smoke migration tests. Other expenses were for correspondence with Ms. Powell. Still other dockets were unclear as to what the cost was for. For example, "Further email exchange with [a member of YCC 444 board or management]" or "preparation and attendance at Board meeting regarding issues and possible next steps". I have been unable to determine if those costs are for compliance or for some other purpose or for a combination of objectives. However, it was possible to get a reasonably clear picture of the costs incurred by YCC 444 in enforcing compliance by Ms. Ryan.

[59] I have divided the Pre-CAT costs claimed into three categories. First, the costs incurred by YCC 444 in having its lawyers write warning or advice letters to Ms. Ryan. Second, the costs incurred by YCC 444 in having its lawyers review the

emails that Ms. Ryan persisted in sending to them despite YCC 444's entreaties for her to stop. Third, the costs which YCC 444 spent in preparing for this Application before it was filed. YCC 444 also claims HST on all legal costs awarded.

- [60] Turning first to the letters written by YCC 444's lawyers to Ms. Ryan, as noted above, there were six of these and YCC 444 claims a total of \$3,907 for the cost of them. Not only is this cost reasonable, but YCC 444 is to be commended for its approach. Often, in cases like this, the lawyers take a threatening or warning tone exclusively. While the YCC 444 lawyers did warn Ms. Ryan, in their first letter, that if YCC 444 was required to take legal action, the costs would be payable by her, it also went to some lengths to involve Ms. Ryan in possible approaches to solve the problem. Even in what was labelled as the last warning, YCC 444's lawyers continued to try to persuade Ms. Ryan to co-operate with YCC 444's attempts to address her problem. In a letter dated March 3, 2022, YCC 444's lawyers wrote:

Your continued disruptive conduct – which appears *may* be misdirected at Ms. Powell – is incredibly problematic, is in breach of the Corporation's governing documents, and is drawing the Corporation's attention away from addressing the source of your smoke migration complaints. Your disruptive outbursts directed at Ms. Powell are counterproductive and are clearly not effective at preventing the smoke migration you are alleging. We implore you to immediately cease and desist from any further outbursts. If you stop these outbursts, the Corporation will be able to focus its attention on identifying the source of the alleged smoke migration problem rather than sending these types of communications to you.

**This is your final warning to cease and desist any disturbances directed at Ms. Powell or her unit. If the conduct persists, legal proceedings will be commenced against you.**

- [61] The Tribunal has repeatedly said that it may be unfair to require condominium owners as a whole to bear the costs of enforcing compliance against one owner. The provisos are that the condominium corporation has acted reasonably and that the owner has been given some warning that the costs would be assessed against him or her. These criteria are met in this case. I conclude that Ms. Ryan's conduct led directly to these letters and she alone should bear the expense.
- [62] Ms. Ryan also persisted in copying YCC 444's lawyers on a great many of her steady stream of complaints and abuse to the YCC 444 management. Both YCC 444 and its lawyers asked her on multiple occasions to stop copying the lawyers on this correspondence as it was running up costs unnecessarily. However, Ms. Ryan ignored these warnings. YCC 444 spent \$4,170.50 having its lawyers review emails sent to them by Ms. Ryan and respond to them. Again, in all the circumstances, this cost is reasonable and it is appropriate that Ms. Ryan alone should bear these costs.
- [63] YCC 444 also spent \$4,231 in costs that either are explicitly or appear to be costs incurred in preparing for this Application. I will consider these amounts when



determining the legal costs of the Application, below.

[64] Another head of costs that YCC 444 is claiming is for the security cameras it installed on the fifth floor, where both Ms. Ryan and Ms. Powell live, and the security personnel it had on the floor from July, 2022 to October, 2022. YCC 444 claims \$2,576.40 for the cameras and \$36,654.39 for the costs of the security. My concern with this claim is the fact that YCC 444 did not advise Ms. Ryan that she would be liable for paying this amount. When YCC 444's lawyers advised Ms. Ryan of the decision to install cameras, no mention was made of the security people being posted. In the letter to her dated March 3, 2022, Ms. Ryan was advised that the cameras, "will assist in identifying breaches of the Corporation's governing documents in the corridor (such as shouting in the hallways or vandalism of suite doors) and in the investigation with respect to the alleged smoke migration". It may not be necessary in all cases that a warning of cost consequences be direct and unequivocal. There may be circumstances in which the liability for costs may be assumed from other statements. In this case, given Ms. Ryan's fixed, and frequently expressed, idea that she was acting appropriately and that was Ms. Powell who was violating the rules, a more direct statement that Ms. Ryan was to bear the costs if the matter proceeded to litigation ought to have been given. The warning should have included the costs of the security personnel. I conclude that it would not be either fair or appropriate to charge Ms. Ryan with these costs.

[65] YCC 444 also claims its costs of this proceeding in the amount of \$4,231 for preparation, as noted above, and the amount of \$11,173.50 for legal costs of the Application. Awards of costs in a proceeding are governed by Rule 48.2, which reads:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[66] YCC 444 submits that the costs of the Application should be borne by Ms. Ryan because her lawyer insisted on attempting to re-litigate the issue of Ms. Powell's smoking and in disputing YCC 444's decision to settle separately with her and to call her as a witness. There were several occasions when Ms. Ryan's lawyer did delay proceedings by raising those issues. However, after a direct warning from me, the lawyer did desist. I believe the amount of \$1,000 will compensate YCC 444 for the direct costs it incurred due to this delay.

[67] I will order that Ms. Ryan pay the amount of \$200 to reimburse YCC 444 for its filing fees, \$8,077.50 plus HST to YCC 444 on account of the legal costs it incurred in attempting to have Ms. Ryan comply with its rules and a further amount of \$1,000 plus HST for the costs of this proceeding. In view of the amounts involved, I will give Ms. Ryan 60 days to pay.

**C. ORDER**

[68] The Tribunal Orders that:

1. Ms. Ryan will immediately bring herself into compliance with subsection 117 (2) of the Act and with YCC 444 Rules B.5, B.6, B.8, C.2, D.9 and D.11. In particular, and without limiting the generality of the foregoing, Ms. Ryan will immediately cease and desist from:
  - a. the nuisance of noise under subsection 117 (2) of the Act;
  - b. the verbal and written abuse to which she has subjected Ms. Powell, her children and the management of YCC 444, in particular the condominium manager and the on-site supervisor;
  - c. the posting of abusive and insulting notices on Ms. Powell's door and on any common element bulletin board; and
  - d. hanging sheets over her front door or posting notices on her door.
2. Ms. Ryan will, within 60 days of the date of this Order, pay to YCC 444 the following amounts:
  - a. \$200 for YCC 444's filing fees with the Tribunal;
  - b. \$8,077.50 plus HST of \$1,050.07 for a total of \$9,127.57 for costs incurred by YCC 444 for enforcing Ms. Ryan's compliance with the Act and YCC 444's governing documents; and
  - c. \$1,000 plus HST of \$130 for a total of \$1,130 in reimbursement of YCC 444's costs of this Application.

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Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: June 16, 2023