

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 12, 2023

CASE: 2022-00753N

Citation: Jalbout v. Brown et al., 2023 ONCAT 147

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

Member: Roger Bilodeau, Member

The Applicant,

Jennifer Jalbout,

Represented by Michael Wade, Counsel

The Respondents,

Leigh Brown

Self-Represented

Dean Dicks

Represented by Leigh Brown, Agent

Jaymie Dicks

Represented by Leigh Brown, Agent

The Intervenors,

David Dubeau

Self-Represented

Carleton Condominium Corporation No. 272

Represented by Dan Fried, Agent

Hearing: Written Online Hearing – February 27, 2023 to August 11, 2023 and August 23, 2023 to September 5, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] Carleton Condominium Corporation No. 272 (“CCC 272”) is a townhouse style condominium community located in the central-west area of the City of Ottawa, within close walking distance to public transit, various amenities and the

picturesque Ottawa River. Over 130 residents currently call this community of 60 townhouses home. From the CCC 272 website, one could form the impression that it is an idyllic urban living community. For the residents of two condominium units in that community, it appears that nothing could be further from the truth.

- [2] The Applicant Jennifer Jalbout is the owner of a unit in CCC 272 and has been residing there since late 2017. The Respondents live in the unit adjacent to Ms. Jalbout's. A common elements alleyway is located on the other side of Ms. Jalbout's unit, and it separates her unit from the next set of units in CCC 272. There is an exclusive use parking space in front of each unit, as well as a defined exclusive use backyard area in the rear of each unit with a shared fence made of alternating wooden planks between the backyard area of each unit. A common area extends beyond the exclusive use backyard area of each unit.
- [3] The Respondents rent their unit from David Dubeau and have done so since about the spring of 2016. Mr. Dubeau and the CCC 272 are both intervenors in this matter.
- [4] At various points in their relationship as neighbors, Ms. Jalbout and Ms. Brown were on friendly and social terms. Since approximately early 2019, that is no longer the case. At various times since 2019, one or the other (or both) has alleged that the other party has engaged in acts of harassment, bullying, intimidation and nuisance, including complaints about odour, smoke, light and noise. To say the least, there is no love lost between Ms. Jalbout and the Respondents.
- [5] Following the filing of this application, Ms. Jalbout and the Respondents attempted to negotiate and to mediate their dispute through the CAT process, without success. In fact, they have both indicated that no matter what I decide in this case, their relationship as condominium neighbors is beyond any hope of repair. Of course, one hopes that this is just an exaggerated expression of the frustration that each of them now feels and that despite their current dispute which is before me, they can at least find the basis for harmonious coexistence hereafter.
- [6] For the reasons set out below, I have decided that Ms. Jalbout and the Respondents must both take steps to address any spillover from their respective backyard lighting onto the other party's property. I also find that the evidence in this case does not support any other claim by each of them in regard to various alleged nuisances. In such case that Ms. Jalbout has any further complaint about the Respondents, or vice versa, she (or the Respondents) must convey any such complaint in writing to the owner, Mr. Dubeau, and/or to the board of CCC 272. Finally, each party shall bear its own costs.

[7] In order to arrive at my decision, I reviewed the numerous exhibits, photographs and submissions which were filed by the parties (100 in total), many of which were quite voluminous. I also wish to point out that the two Intervenors participated in the case on the same footing as the other parties, with all the rights and responsibilities of a party, as provided for by the Tribunal's Rules of Practice.

B. ISSUES & ANALYSIS

[8] When the hearing started, I confirmed the issues with the parties, at which time they raised claims and counterclaims. For reasons of efficiency and with a view to addressing all matters in one proceeding, the issues to be decided in this Stage 3 – Tribunal Decision are therefore as follows:

- a) Whether the Respondents have engaged in behaviour that constitutes a nuisance under section 117(2) of the *Condominium Act, 1998* (the "Act") and/or section 26 of Ontario Regulation 48/01 (the "Regulation");
- b) Whether the Applicant has engaged in behaviour that constitutes a nuisance under the Act and/or of the Regulation; and
- c) Are costs warranted?

Have the Respondents or Ms. Jalbout respectively engaged in behaviour that constitutes a nuisance under the Act or Regulation?

[9] For ease of reference, I will address all allegations by one party or the other under the various topics described below.

Lighting

[10] Ms. Jalbout takes issue with the security lighting at the rear of the Respondents' property because in her view, the range of the motion activated security light has not been restricted to the Respondents' backyard and therefore illuminates her backyard. She claims that the light can be triggered by her movement in the middle of her own backyard. Ms. Jalbout further submits that the Respondents purposefully aim the light so that it will illuminate her backyard and that it is often left on from dusk until dawn.

[11] The Respondents refute those allegations. Their position is that the light in question was installed in the 1990's and that it was approved at that time by the board of CCC 272. They maintain that this light does not shine beyond the backyard area of their unit. They also add that in the fall of 2022, they asked a current board member to check this security light and confirm that it was not

encroaching onto Ms. Jalbout's property. According to the Respondents, the board member confirmed that it was not.

- [12] The Respondents submit that any excessive lighting in the rear of Ms. Jalbout's unit is caused by her own lighting. They add that Ms. Jalbout has removed the cover of her own backyard light and is using an extremely bright bulb so as to make it brighter. They also point out the fact that in the common elements alleyway on the opposite side of Ms. Jalbout's property, there is a security light (installed by CCC 272) which illuminates that side of her property and the alleyway.
- [13] Ms. Brown further states that in or about late summer/early fall 2022, Ms. Jalbout installed hundreds of string lights all around her backyard, including on her side of the shared fence as well as on the extra fencing which she has installed in the common use area at the rear of the backyards of both properties (the matter of the extra fencing at the rear of Ms. Jalbout's backyard is being dealt with separately by CCC 272). The Respondents further allege that Ms. Jalbout's string lights are turned on every night until the following morning, seven days a week and that they have had to install darkening curtains in their bedroom window to block the light.
- [14] The Respondents further submit that one of the reasons for using their backyard security light is because Ms. Jalbout has in the past placed her chair well past her backyard property line behind her makeshift extra fencing and has sat there for long periods of time, staring straight into their bedroom window.
- [15] In addition to the above, Ms. Jalbout and the Respondents provided testimony about other conflicts related to the lighting in their backyards, but that evidence is not relevant to my determination of whether any backyard lighting is a nuisance.
- [16] The final reference to this lighting issue is contained in the minutes of a meeting of the CCC 272 board of directors held on October 26, 2022, where it appears that Ms. Jalbout submitted a complaint to the board by email about the lighting in the Respondents' backyard, asking for the motion sensor to be changed as well as for the installation of a dimmer light bulb or its removal altogether. The minutes show that this matter was discussed and was to be handled by the president of CCC 272. No other information was provided in that regard.

Odour

- [17] Ms. Jalbout submits that the Respondents use scented laundry detergent and/or bleach as a weapon to harm her and that these odours emanate from the Respondents' clothes dryer exhaust outlets. In previous arrangements between

Ms. Jalbout and the Respondents, the Respondents had agreed to use unscented detergent and to warn Ms. Jalbout before using bleach. Ms. Jalbout submits that the Respondents have reverted to using scented laundry detergent and that they now use bleach frequently and without warning. Ms. Jalbout further claims that the Respondents have set their washer/dryer to auto run so that it will constantly emit a low-grade odour. Ms. Jalbout submits that the laundry odour issues can be resolved by the Respondents' use of non-scented products and by returning to a time of consideration in which the Respondents warned her about when she intended to use bleach.

[18] In response, the Respondents submit that they do not use bleach on a regular basis and that they have done so on at most a handful of occasions since moving into their unit. They add that one of the Respondents (Mr. Dicks) is very sensitive to strong scents and that they therefore avoid any cleaning materials with strong scents. They reject any claims by Ms. Jalbout that they use laundry detergent or products as a weapon aimed at her.

[19] In the past, the Respondents state that there were times when they did their utmost to accommodate Ms. Jalbout's demands about using her choice of laundry soap, i.e. Nellies Soap. The Respondents actually went to the point of asking family and friends to drive them to find this product because they do not drive and do not own a car.

[20] The Respondents add that Ms. Jalbout's demands became more and more insistent, including to the point of telling them to only do their laundry after 7 pm. They add that Ms. Jalbout would knock on their door and angrily state that their laundry was making her sick. Ms. Brown would step outside to show her that their clothes dryer was not even running, and Ms. Jalbout would continue to argue the point. The evidence shows that Ms. Brown would simply tell Ms. Jalbout over and over to leave them alone. The Respondents believe that the issue was never about the smell of their laundry detergent but rather about control and intimidation.

[21] The Respondents add that they have never received any odour complaints from any other neighbors or from the board. The Respondents also add that when other residents of CCC 272 use highly scented products, the odours do circulate within the entire CCC 272 community area.

[22] For its part, CCC 272 is of the view that the Respondents are using normal laundry products and that the dryer exhaust vent at the front of their unit is not emitting any toxic or illegal fumes. It adds that there are 60 units in the CCC 272 community and that the board has never received any other such complaint over the decades of its existence.

- [23] As a final note on this topic and in light of the criteria for the admission of late evidence as set out in the case of *Russell v. York Condominium Corporation No. 50*, 2021 ONCAT 74, I allowed CCC 272 and counsel for Ms. Jalbout to upload their late evidence. I also made a ruling that I would only consider such new evidence to the extent that it might relate to the various allegations of nuisance as between Ms. Jalbout and the Respondents.
- [24] The late evidence submitted by the agent for CCC 272 consisted of a video showing that Ms. Jalbout has been storing garbage, with some garbage being allegedly smelly or rotten, in a plastic bin in front of her unit, along with two fans behind or alongside the bin blowing air in the direction of the Respondents' unit.
- [25] In response, counsel for Ms. Jalbout advised that her bin contained only clean recycling material and he submitted pictures of the contents of the bin in support of his assertion. He also advised that the fans are located where they are in an attempt to keep the odour of the Respondents' laundry detergent away from Ms. Jalbout's door/window.

Noise

- [26] In her application, Ms. Jalbout complained of very loud noises coming from the Respondents' use of their kitchen drawers. She also complained of vibrations that would be felt in her unit, alleging that these vibrations were caused by the Respondents movements and actions within their unit.
- [27] From the evidence given by the Respondent Ms. Brown during her cross-examination, any noise caused by the kitchen drawers was in the nature of a low volume 'clickety click'. Be that as it may, Ms. Brown confirmed that this matter was resolved in or about April 2023.
- [28] In addition, Ms. Jalbout claims that the more significant noise intrusion occurs as a result of the actions of the Respondent Jaymie Dicks, with loud noises being emitted from her bedroom. As noted in the evidence, the bedroom of the Respondent Jaymie Dicks' is at the front of the house, adjacent to Ms. Jalbout's bedroom.
- [29] Ms. Tanya Johnson is also a resident of CCC 272. In her affidavit filed in support of Ms. Jalbout, Ms. Johnson testified as follows:

...Jaymie Dicks, habitually leaves her windows open throughout the year. Ms. Dicks is unreasonably loud and yells on a daily basis. She also plays music through a speaker system which is unreasonably loud and disturbing, and plays

loud musical instruments. Her yelling and music are audible throughout the neighborhood, particularly in the units nearby.

Ms. Dicks remains awake late into the night and these behaviours continue. They are especially disturbing during the night given my attempts to sleep and the otherwise quiet neighborhood.

[30] Although the Respondents had the opportunity to cross-examine Ms. Johnson, they chose not to do so. However, the Respondents did challenge Ms. Johnson's entire evidence on the basis that her property is not adjacent to theirs and is some distance away, being across the street and to the left of their property.

[31] In support of her claim, Ms. Jalbout also submitted a video recording of one such alleged incident, under the title 'Nuisance - Excessive noise from Jaymie's room'. Ms. Jalbout also believes that residents of the unit on the other side of the Respondents' unit have not complained about noises coming from the bedroom window of Jaymie Dicks's window because that unit is offset and behind Jaymie Dicks' window.

[32] The Respondents submit that Ms. Jalbout's video was the result of holding her phone outside her window so that she could record any sound coming from Jaymie Dicks' bedroom window. They add that the video recording submitted by Ms. Jalbout is the only recording of such noise and that it is a low volume recording of a normal conversation, with some giggling.

[33] From all accounts, Ms. Jalbout has made one complaint to the board in regard to noise emanating from the Respondents' unit. During its meeting held on August 30, 2022, the board discussed a noise complaint made by Ms. Jalbout against the Respondents. The minutes of that meeting read as follows:

Despite the Applicant stating that the Respondents create noise during the night, the resident of unit X who lives on the other side of the Respondents' unit has made never (sic) complaints about any noise. (Modified by me to preserve the anonymity of the unit addresses)

[34] In addition to the above, the Respondents have submitted evidence showing that eight noise or disturbance complaints about them were made to the Ottawa By-law Services during the period of January to December 2022, all of which were attended to by the Ottawa Police, without any further steps being taken by them. The Respondents believe that Ms. Jalbout filed these complaints with the By-law Services. It should also be noted that neither party to this matter has ever been fined under a city By-law nor charged by the police in regard to any allegation of noise or a disturbance.

[35] The Respondents therefore reject the noise complaint as being completely untrue. They submit that they are a very respectful family who do their utmost to not impose upon or disturb any neighbors. The Respondents add that they have never received any such complaint in the past.

Smoke/Vapour

[36] Ms. Jalbout states that one or more of the Respondents uses marijuana on a regular basis. Her issue is not the use of marijuana, which she recognizes as being legal. However, she states that the smell and smoke created by marijuana use in the Respondents' unit permeates her unit and harms her. She further submits that the outdoor use of marijuana by the Respondents is excessive and interferes with her ability to enjoy her property.

[37] The Respondents flatly reject this accusation. They insist that they have never smoked cigarettes in any home that they have lived in. In regard to the use of marijuana, the Respondents allow that it has happened on very few occasions but that they do not sit out in the backyard to smoke cannabis, especially given that their other neighbor has two children and that they are respectful of that fact.

[38] Ms. Brown also indicated that she is a medical marijuana patient who has a chronic illness for which she uses cannabis oils, CBD and a special dry vape that was prescribed many years ago. In cross-examination, Ms. Brown also indicated that she is a spiritual person and that she occasionally burns sage on occasion, doing so for less than ten seconds at a time. The Respondents add that marijuana is legal and that many other residents who are within close range of both Ms. Jalbout and the Respondents use marijuana products and that they, the Respondents, should not be blamed for marijuana odours produced by other residents in the CCC 272 community.

[39] The Intervenor Mr. Dubeau, as the owner of the Respondents' unit, states that he is highly sensitive to the smell of marijuana and tobacco, that he has entered the Respondents' unit on many occasions and has never detected any hint of marijuana or tobacco residue in the Respondents' unit.

General Nuisance, Annoyance or Disruption

[40] I received evidence from the parties about various behaviours and interactions between them which they have alternatively characterized as intimidation, entrapment, harassment or bullying. These incidents include calls to the Ottawa Police and visits by police officers to both units, with the result that no charges or tickets were ever issued to any party in this matter. The parties have each entered

into evidence photographs or video recordings in support of their respective allegations. That evidence also shows more than one instance where foul language was directed at one party or another.

[41] In my view, these incidents are troubling, unfortunate and point to a dysfunctional environment. However, I was not referred to any governing document of CCC 272 which applies to those types of incidents and behaviours, nor is there jurisdiction under the Act which allows me to address them. I therefore have no authority to decide these issues and I can only urge Ms. Jalbout and the Respondents to find a way forward to co-exist without escalating any further conflict.

Position of the Intervenor David Dubeau, Owner of the Respondents' Unit

[42] In regard to the allegations put forward by Ms. Jalbout as against the Respondents, Mr. Dubeau stated that he cannot recall or find any record of contact or any complaint from Ms. Jalbout, either directly to him or via the board. He added that he has not received any complaints about his tenants in all the years of renting his unit. In cross-examination, Mr. Dubeau struck me as a reasonable and accommodating person who pays close attention to his business affairs and is keen on finding practical solutions.

[43] Mr. Dubeau stated that he made one attempt to reach out to Ms. Jalbout directly, sometime in the fall of 2022, when he went to see her about how she would often park her vehicle in such a way that she would 'crowd' out the Respondents' parking space. He states that Ms. Jalbout's response to his request was "You should see all the terrible things they do to me." Mr. Dubeau immediately told her that she has his contact information and that she should get in touch with him. He stated that Ms. Jalbout abruptly closed the door and that he has never received any emails or phone calls from her.

Analysis: Has Nuisance Been Shown in the Circumstances of this Case?

[44] Given the issues raised by the parties in this matter, I must determine if any alleged behaviour by the Respondents or Ms. Jalbout constitutes a nuisance under the Act or the Regulation.

[45] I turn first to the relevant provisions of the Act and the Regulation.

From the Act:

Prohibited conditions and activities

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. 2015, c. 28, Sched. 1, s. 102.

From the Regulation:

Nuisance, annoyance or disruption

26. For the purposes of clause 117 (2) (b) of the Act, each of the following is prescribed as a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation if it is unreasonable:

1. Odour.
2. Smoke.
3. Vapour.
4. Light.
5. Vibration. O. Reg. 654/21, s. 1.

(My underlining).

[46] Given that there is no definition of nuisance in the Rules and Regulations of CCC 272 (the “Rules”), it is useful to consider that this Tribunal has referred in past decisions to a dictionary definition of nuisance, as follows: “annoying, unpleasant or obnoxious”: see *Carleton Condominium Corporation No. 132 v. Evans*, 2022 ONCAT 97. This Tribunal has also put forth in other cases, for example in *York Condominium Corporation No. 444 v. Ryan*, 2023 ONCAT 81, that to support a claim of nuisance, the interference must be substantial and unreasonable. In addition, 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.

[47] In a case such as this one and in the absence of any definition in the relevant governing document of CCC 272, I must therefore consider nuisance as a legal

concept. I must also take into account that unpleasant and obnoxious behaviors may occur within condominium communities from time to time and that they may not in themselves support a claim of nuisance.

- [48] After a full review of the voluminous evidence and submissions in this case, as well as upon hearing the parties in cross-examination, I find that the Respondents and Ms. Jalbout have each created a nuisance as a result of the lighting in their respective backyards, contrary to subsection 117 (2) of the Act, and that no other claim for nuisance can be supported by the evidence.
- [49] Having regard to the allegations about odour, noise, smoke, or vibrations, I accept the evidence of the Respondents and of CCC 272 that in a condominium community such as theirs where many units are at close quarters, it is very possible that any of these alleged annoyances could have been produced by residents other than the Respondents, or in the case of vibrations, by the ongoing construction of the City of Ottawa's light rail network. I also accept the evidence of the Respondents that they have done all they can to manage the impact of any such occasional annoyances, as may be the case. I can only recommend that the Respondents should continue to be as considerate as possible, as I believe they have attempted to.
- [50] In sum and leaving aside the issue of backyard lighting issue, I found the Respondents' evidence more consistent and credible than that of Ms. Jalbout's. I also wish to make the following observations flowing from the evidence, which in my view have a bearing on the credibility of Ms. Jalbout's various claims:
- a) In her evidence, Ms. Jalbout denies having extended her backyard fence beyond the shared fence which separates her backyard area from that of the Respondents. On the other hand, and without commenting on the appropriateness or legality of the extended fencing, the Respondents and the Intervenor CCC 272 have produced photographs which show an extension of her fence;
 - b) In regard to her video recording evidence of the bedroom window incident ('Excessive noise from Jaymie's room'), one can only hear a low volume recording of a normal conversation, with some laughter or giggling, without any music or shouting; and
 - c) Finally, it is noteworthy that Ms. Jalbout has never attempted to address or resolve any issues with the Respondents by contacting Mr. Dubeau, as the owner of the Respondents' unit.

- [51] Although I have found that the actions of Ms. Jalbout or the Respondents do not constitute a nuisance, save in regard to the lighting in their respective backyards, I feel compelled to remind all parties that in my view, all complaints raised in this matter could have been and should be settled by a proper application of the relevant rules of CCC 272, many of which were in fact referred to by both Ms. Jalbout and the Respondents in their submissions.
- [52] For good measure, I urge all parties in this case to re-read them attentively for future reference, with emphasis on the section titled Responsibilities of Unit Ownership, as well as the clause pertaining to the enforcement of CCC 272's Rules.
- [53] Unfortunately, some of the behaviours, actions or incidents in this case, while not meeting the legal test of a nuisance, could well serve as a textbook study in how not to live in a condominium community. As a further observation, I believe that it is a truism that some compromises are often a reality of living in a condominium community. Like many things in life, nothing is perfect and condominium residents must accept that there might or will be occasional noises, odours, vibrations, or lighting which one must endure, within reason, with proper efforts by all to find reasonable accommodations when possible and as required. As well, belligerence, hostility and foul language have no place in any community, whether one is an owner, a tenant or a visitor.

What Remedy Should be Granted?

- [54] In regard to the issue of lighting in the respective backyards of Ms. Jalbout and the Respondents, there is no doubt that any such lighting should not be aimed or targeted towards the other party or any other neighbour, nor should it be so powerful or illuminating so as to extend onto another property. The only caveat in this case is that there will inevitably be a minimal amount of spillover from one backyard to another, keeping in mind that the shared backyard fence consists of alternating planks.
- [55] Both parties must therefore use lower intensity lights which do not extend the range of any lighting beyond or outside their backyard area. They must also consider installing blinders, or similar mechanisms, to better direct any lighting to their respective backyards, as required.
- [56] In regard to any lighting which is activated by a motion sensor, steps must be taken to ensure that such sensors can only be triggered by movement in the backyard which is meant to be illuminated by such a light.

- [57] Having further regard to the matter of odours and the late evidence submitted by the agent for CCC 272 and counsel for Ms. Jalbout, I allowed that evidence only to the extent that it might have a bearing on the claims for nuisance on that topic. After assessing the evidence, I am of the view that it does not change my determination in regard to those claims. I therefore leave the respective parties to determine what, if any, enforcement actions should be taken in regard to the activities submitted as part of the late evidence.
- [58] In the same vein and leaving aside the question of any odours, I leave to the board of CCC 272 to manage and decide any issues arising from the placement of any items such as storage, garbage or recycling bins in the back or front of Ms. Jalbout's unit, or any other unit, in accordance with its Rules.
- [59] As a final point and given the circumstances of this case, especially the tension in the relationship between Ms. Jalbout and the Respondents, I order that if Ms. Jalbout has any further complaint about the Respondents, or vice versa, she (or the Respondents) must convey any such complaint in writing to the owner, Mr. Dubeau, and/or to the board of CCC 272.

Are Costs Warranted?

- [60] Ms. Jalbout is seeking costs on a solicitor and client basis. The Intervenor Mr. Dubeau and CCC 272 are seeking their respective costs for legal bills which have apparently so far been incurred by the CCC 272 in dealing with Ms. Jalbout's fence extension beyond the backyard area of her unit. The Respondents have not made any specific claims in regard to costs in this matter.
- [61] Rule 48.1 of the Rules of Practice sets out the general rule that the unsuccessful party will be required to reimburse the successful party for his or her Tribunal fees. Rule 48.2 provides that in general, the Tribunal will not order one party to reimburse another party for legal fees or disbursements.
- [62] In this case, there has been a shared outcome as between Ms. Jalbout and the Respondents in regard to the backyard lighting issue and all other claims were unsuccessful. In the circumstances and pursuant to the discretionary power granted by Rule 48.1, there shall be no award in regard to Ms. Jalbout's filing fees.
- [63] In further regard to the outcome and circumstances of this case, as well as on the basis of the guidance set out in the Tribunal's Practice Direction on Costs, I have determined that this is a situation where an award of costs is not warranted.
- [64] Having regard to the request for costs made by Mr. Dubeau and CCC 272, the

matter of compliance by Ms. Jalbout with the Rules of CCC 272 is being dealt with as a separate matter by the board of CCC 272 and it was not identified as one of the issues to be decided in this case. Any such legal costs are therefore not related to matters in this hearing and as a result, I cannot consider them.

[65] Each party will bear its own costs.

[66] I end this section by noting that although the parties had requested that I consider awarding a penalty, such an award is impossible because under the Act, this Tribunal can only award a penalty in regard to a records dispute, which is not the case in this matter.

In Closing

[67] I appreciate that this case has gone on for longer than expected. There were many steps along the way, including a motion by Ms. Jalbout to obtain the minutes of past meetings of the board of CCC 272; the fact that this proceeding was a new adventure for the self-represented Respondents and Intervenors, with an understandable need for some guidance; various vacation periods or absences; the postponement and rescheduling of the cross-examinations due to an urgent dental matter on my part; the requests for late evidence filed by CCC 272 and by counsel for Ms. Jalbout and the corresponding need to re-open the case to assess and to make a determination in regard to those requests. I wish to thank the parties and the counsel for Ms. Jalbout for their patience, as well as for their respective submissions in this matter.

C. ORDER

[68] The Tribunal orders that:

1. Ms. Jalbout and Mr. Dubeau, as the respective owners, must make modifications or adjustments to the backyard lighting of their respective units so as to limit the scope of the lighting or glare to their exclusive use backyard area and to minimize any spillover that might occur through the fence planks. Any expense incurred in that regard must be borne by the party which is responsible for lighting in each backyard area;
2. In such case that Ms. Jalbout has any further complaint about the Respondents, or vice versa, she (or the Respondents) must convey any such complaint in writing to the owner, Mr. Dubeau, and/or to the board of CCC 272; and
3. There is no order as to costs.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: October 12, 2023