

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 18, 2023

**CASE:** 2023-00433N

**Citation:** Parachuk v. Karakoc, 2023 ONCAT 198

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**  
Mickey Parachuk  
Self-Represented

**The Respondent,**  
Hamza Karakoc  
Self-Represented

**The Intervenor,**  
York Condominium Corporation No. 78  
Not appearing

**Hearing:** Written Online Hearing – October 19, 2023 to December 4, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] The Applicant, Mickey Parachuk, is the owner of a unit of the Intervenor, York Condominium Corporation No. 78 (“YCC 78” or the “corporation”). She alleges that the Respondent, Hamza Karakoc, and/or other occupants of his unit are creating unreasonable odour from their use of a charcoal-burning water pipe which is interfering with the quiet enjoyment of her unit in violation of section 117 (2) of the *Condominium Act, 1998* (the “Act”) and the rules of the corporation. She also alleges that YCC 78 has failed to address her concerns. She requests that the Tribunal order the corporation to forbid the use of water pipes and vaping within YCC 78’s units.

[2] Mr. Karakoc lives in the unit directly above Ms. Parachuk’s. He denies her allegations and requests that her application be dismissed. His position is that the odour Ms. Parachuk alleges she is experiencing is not coming from his unit; his wife is the only occupant who smokes, and she smokes cigarettes.

- [3] YCC 78 did not join this matter at any stage of the proceedings.
- [4] For the reasons set out below, I find that there is insufficient evidence that the odour Ms. Parachuk reports she is experiencing is unreasonable or that its source is the Respondent's unit. The evidence with respect to whether YCC 78 has fulfilled its obligations to address Ms. Parachuk's concerns is inconclusive and therefore I make no finding on this issue. However, I am ordering that should YCC 78 receive an air quality assessment report prepared by a qualified professional which finds that odour that exceeds generally accepted exposure limits is infiltrating Ms. Parachuk's unit, within 60 days of the receipt of the report, YCC 78 is to undertake an investigation to determine the source of the odour and to then take reasonable steps to mitigate the infiltration.

## **B. ISSUES & ANALYSIS**

- [5] The issues to be addressed in this matter are:
1. Is the Respondent, or an occupant of the Respondent's unit, creating odours that are a nuisance pursuant to section 117 (2) of the Act?
  2. Has YCC 78 fulfilled its obligations under the Act and its governing documents with respect to the Applicant's concerns about nuisance odours?

If it is found that the Respondent is creating nuisance odours and/or that YCC 78 has not fulfilled its obligations, the Tribunal must decide what orders, if any, it should make. The final issue to be addressed is whether any costs should be awarded in this case.

- [6] This matter proceeded without the participation of YCC 78. I am satisfied that the corporation was properly served with notice of the application. Ms. Parachuk submitted an e-mail she received from condominium manager Bedri Xhomo on August 29, 2023 in which he confirmed that the notice of application had been received and then stated, "the board unanimously has decided not to participate in this case." Further, on September 29, 2023, Tribunal staff contacted condominium management by telephone and e-mail and advised that this matter could proceed to Stage 3 – Tribunal Decision and that an order could be made without YCC 78's participation.
- [7] Ms. Parachuk and Mr. Karakoc each testified on their own behalf. I requested initial written submissions and then held a teleconference call with the parties on December 2, 2023.

**Issue 1: Is the Respondent, or an occupant of the Respondent's unit, creating odours that are a nuisance pursuant to section 117 (2) of the Act?**

[8] The underlying question in this matter is whether Ms. Parachuk is experiencing unreasonable odour in her unit. Section 117 (2) of the Act states:

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,

(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.

Section 26 of Ontario Regulation 48/01 ("O. Reg. 48/01") states:

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.

Neither the Act nor O. Reg. 48/01 defines "nuisance, annoyance or disruption". In its decision in *Carleton Condominium Corporation No. 132 v Evans*, 2022 ONCAT 97 (CanLII), summarizing *Antrim Truck Centre Ltd. V. Ontario (Transportation)* 2013 SSC 13 (CanLII), the Tribunal wrote at paragraph 20:

... 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.

Similarly, minor or merely occasional interference is not sufficient to support a claim of annoyance or disruption. Factors such as the time incidents occur, how often they occur, and how long they last must be considered in determining whether the odour an individual experiences is unreasonable.

[9] Ms. Parachuk submitted that the Respondent is in breach of two of YCC 78's rules:

Rule 4: No owner shall permit anything to be done in his unit which will in any way increase the risk of fire or which will in any way injure or annoy other owners or which will conflict with the regulations of the fire department or with the rules of the Board of Health. (The most common violation of this rule is the use of barbecues

or other cooking devices on the balcony. Not only is it a fire hazard but the smoke and cooking odor can be a serious annoyance to neighbors).

Rule 13: No stores of any combustible or offensive goods, provisions or materials shall be kept on the property.

Ms. Parachuk's position is that the Respondent and/or other occupants of his unit, are or have been smoking using a charcoal-burning water pipe. While the explanation included with Rule 4 appears to indicate its intent is to prevent fire, I find it is written broadly enough to apply in this case; arguably, burning charcoal could increase the risk of fire and any resulting odour could "annoy other owners." However, I find that Rule 13 is not relevant to this case. Almost any substance could be combustible if exposed to a heat source; it appears that this rule was designed to prevent the storage of dangerous goods, such as propane tanks.

[10] The corporation rules uploaded by the Applicant to the CAT-ODR system in this case do not include any that specifically address smoking. Both Ms. Parachuk and Mr. Karakoc confirmed that smoking is allowed in the units at YCC 78 but forbidden on the common elements. I asked them if they could provide a copy of any smoking rule the corporation has put in place. Both indicated they were not aware of any such rule. However, it is not necessary for Ms. Parachuk to prove that any of YCC 78's rules have been breached to establish that odour is a nuisance; the provisions of the Act, in this case, s. 117 (2), take precedence over any provisions set out in a corporation's governing documents.

[11] Ms. Parachuk testified that she is experiencing what she described as a pungent odour of a charcoal-burning water pipe in her unit. She indicated that she is familiar with this odour because in 2021, a former resident who occupied a unit across the hall from her used this type of apparatus with their door open. She supported her testimony with handwritten logs she has kept of when she experienced odours in her unit. The odours she recorded are variously described as shisha, spearmint, woody, sweet or burning. She recorded the following frequency of their occurrence:

- 14 days in July, 2023
- 16 days in August, 2023
- 27 days in September 2023
- 25 days in October 2023

- 16 days in November 2023

The logs indicate Ms. Parachuk experienced odours at various times throughout the day with the greatest frequency between 11 p.m. and 6:30 a.m. She testified that the odours permeate all three bedrooms in her unit and prevent her from sleeping and/or sometimes wake her up. Some of the log entries record only the time she experienced the odour and others indicate the odour persisted “all day.” She stated that more recently, the frequency of odours has reduced and suggested this is because the windows on enclosed balconies are closed more often in colder weather. She also testified that the more recent odours she has experienced have been from cigarettes rather than a water pipe. I note that her November log only states “odour” and includes no specific descriptors.

- [12] Ms. Parachuk testified that she has installed eight fans, three air cleaners and two aromatherapy diffusers in her three-bedroom unit to address the odour but with limited success. She stated that only the bathroom fan has sufficient draw to clear the air. She indicated that her enclosed balcony holds both heat and odour.
- [13] Ms. Parachuk also provided three letters from other residents of YCC 78 to support her contention that there is unreasonable odour in her unit caused by the Respondent. One resident, who lives two floors above Ms. Parachuk, wrote that during the spring and summer months, he experienced a “sickening, sweet odour that sometimes smells like burning” when his windows were open. He also wrote that the odour sometimes woke him up. A resident living in a unit adjacent to Ms. Parachuk wrote that she has smelled smoke and heard the sound of bubbling while on the balcony of her unit and has also smelled smoke within Ms. Parachuk’s unit. Another resident wrote that she has smelled a ‘weird’ odour in Ms. Parachuk’s unit and that the only room in which it was not noticeable was the bathroom. Ms. Parachuk also submitted a letter addressed to condominium manager Bedri Xhomo which was written by a handyman who performed work in her unit in February 2023 in which the handyman wrote there was an “unpleasant” odour in the unit.
- [14] Ms. Parachuk submitted a chart she compiled of the units that surround hers which indicates not only the units whose occupants smoke but also what they smoke. She bases her conclusion that the odour is emanating from the use of a water pipe in Mr. Karakoc’s unit on this chart. I asked her how she compiled the information and she advised that she had asked the occupants of the units directly. The chart indicates that occupants of the two units adjacent to Mr. Karakoc’s both smoke cigarettes as does the occupant of a unit two doors down from Ms. Parachuk’s.

She testified that she had witnessed Mr. Karakoc's son visiting her former neighbour who used a water pipe and that she "made the connection" that Mr. Karakoc's son, who does not reside at YCC 78, may be using a water pipe when he visits his parents.

[15] Mr. Karakoc lives in the unit of YCC 78 with his wife and daughter. He testified that his wife, who is home throughout the day, is the only individual who smokes. He stated that she only smokes cigarettes and only during daytime hours; they are in bed by 10 p.m. Further, she only smokes on the enclosed balcony of their unit, the windows of which may be open depending on weather conditions.

[16] To support his position that the odour Ms. Parachuk is experiencing is not coming from his unit, Mr. Karakoc submitted copies of four reports prepared by YCC 78's security staff who attended at his unit after receiving complaints about odour from Ms. Parachuk. He testified that he requested these reports from YCC 78 and that they comprise all of the incidents reported by Ms. Parachuk that security staff investigated.

[17] The first security report is dated April 19, 2022. It indicates that Ms. Parachuk reported the smell of smoke at 3:45 a.m. Security staff could not verify the odour in her unit and went to the floors above and below hers to investigate but smelled no smoke. The second report is dated December 17, 2022. At approximately 7:30 p.m., security staff attended at Ms. Parachuk's unit but could not verify the smell of smoke she had reported. They went to Mr. Karakoc's unit and stood outside his door but could not smell smoke. The third report is dated January 20, 2023. At approximately 10:30 p.m., security staff attended on the floors above and below Ms. Parachuk's but could not verify the smell of smoke. With respect to this incident, Mr. Karakoc provided time-stamped photographs which indicate he and his family were outside of the country at that time. He testified that no one stayed in and/or checked his unit while they were away.

[18] The final security report is dated August 7, 2023. At approximately 10:30 p.m., security staff attended at Ms. Parachuk's unit after receiving a report of odour in her unit. The report indicates they identified the odour of "food cooked by neighbours" but went to Mr. Karakoc's unit after Ms. Parachuk advised that the occupants of that unit use shisha. They could not verify any odour from the corridor outside Mr. Karakoc's unit but heard the sounds of a "normal conversation". The report indicates that after knocking on the door, they were admitted to the unit but could not smell any odour. Mr. Karakoc provided documentary evidence that his wife and daughter were out of the country from July

9 to September 10, 2023. He testified that during their absence he stayed at his son's home and that no one else occupied the unit during this period. I note this testimony contradicts the security report which indicates not only that security staff heard a conversation from the unit but also that they gained entry to it.

[19] I have no doubt that Ms. Parachuk finds the odours she reports experiencing in her unit to be annoying; however, that does not mean they are unreasonable. Factors as simple as open windows could create the smell of smoke in a building where smoking is permitted. Further, an individual's perception of odours will necessarily be somewhat subjective. In this case, the fact that Ms. Parachuk has installed a large number of fans and air cleaners in her unit but reports these do not control the odours she experiences suggests that she might be particularly sensitive although I note that neither of the two medical letters she submitted indicates she has a heightened sensitivity that could require some specific accommodation. However, there is no independent evidence, such as the results of air quality testing, to substantiate the existence and level of the odours which Ms. Parachuk reports. While I acknowledge that three of the letters of support she submitted indicate that other individuals detected odours in her unit, only one identifies the odour as smoke.

[20] Further, while Ms. Parachuk is convinced that the odours she reports experiencing result from the use of a charcoal-burning water pipe by occupants of Mr. Karakoc's unit, I cannot reach this conclusion; the four security reports submitted by Mr. Karakoc indicate that staff did not verify his unit was the source of the odours when they investigated Ms. Parachuk's complaints.

[21] Ms. Parachuk described herself as an advocate for a smoke-free environment and provided a number of references with respect to the health impact of second-hand smoke. She requested that the Tribunal order YCC 78 to implement some form of rule or by-law forbidding the use of water pipes in units. The Tribunal's jurisdiction is established in Ontario Regulation 179/17 ("O. Reg. 179/17"). The Tribunal has jurisdiction to order a remedy where it finds a violation of the Act or governing documents with respect to disputes relating to s. 117(2) of the Act. In this case, I make no such order. The evidence does not support a finding that activity in Mr. Karakoc's unit has created the odours which Ms. Parachuk indicates she is experiencing and therefore I find there is no breach of YCC 78's Rule 4. Nor can I find that s. 117 (2) of the Act has been breached; I cannot find, based on the evidence before me, that the odours are unreasonable.

## **Issue 2: Has the Intervenor fulfilled its obligations under the Act and its**

**governing documents with respect to the Applicant's concerns for nuisance odours?**

[22] The corporation has the obligation to ensure that no activity that results in the creation or continuation of a prescribed nuisance, annoyance or disruption is permitted. It also has an obligation to enforce its rules. Section 17 (3) of the Act states:

The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

[23] The reason YCC 78 did not participate in this matter is unknown. I acknowledge that only one of the four security reports submitted by Mr. Karakoc indicates that staff were able to verify the presence of odours in Ms. Parachuk's unit. Similarly, Ms. Parachuk testified that condominium management was unable to confirm odours when they visited her unit. However, the fact that Ms. Parachuk filed an application with the Tribunal would have indicated to the corporation that her concerns were ongoing. As the mediator in this matter set out in the Stage 2 Summary and Order, the fact that YCC 78 did not join this case meant there could be no negotiation of a settlement in this matter.

[24] Ms. Parachuk's testimony is the only evidence before me of the response the corporation made to address Ms. Parachuk's concerns. She testified that she has notified condominium management about the odours in her unit on numerous occasions by telephone or text message but was unable to produce any written correspondence she sent to the corporation. She also testified that a member of the condominium management staff who had attended at her unit could not confirm the odour because of their own health condition. Further, one of the resident neighbours and, as noted above in paragraph 13, a handyman who worked in her unit, both sent letters to condominium management in February 2023 about odours they had noticed in her unit. It is unclear whether the corporation responded. Ms. Parachuk also testified that condominium management had advised her that they had sent letters to Mr. Karakoc. However, the content of these letters is unknown. Ms. Parachuk's daily log for July 2023 indicates that she contacted security on three dates for which no security reports were submitted by Mr. Karakoc. While he testified he had received all of the relevant incident reports, whether the July 2023 incidents were investigated cannot be verified. In fact, although both Ms. Parachuk and Mr. Karakoc advised that



smoking is not allowed on YCC 78's common elements, whether the corporation has any rule that sets out any other restrictions with respect to smoking is unknown.

[25] Because YCC 78 did not participate in this proceeding, I have insufficient information before me to make a finding with respect to whether YCC 78 fulfilled its obligations to address Ms. Parachuk's concerns.

[26] I asked Ms. Parachuk if any formal investigation such as air quality testing, or a review of her unit's HVAC system, had taken place. She advised it had not. Given I have found that the evidence of unreasonable odours in her unit is inconclusive, it may be helpful for her to obtain an assessment of the air quality in her unit from an independent, qualified professional. Such a report could provide information about the composition and exposure levels of any odours infiltrating her unit. In the specific circumstances of this case, where the absence of any evidence from YCC 78 does not allow me to conclude that it has fulfilled its responsibilities under the Act, I am taking the somewhat unusual step of ordering that should YCC 78 receive an air quality assessment report from Ms. Parachuk which finds that odour that exceeds generally accepted exposure limits is infiltrating her unit, within 60 days of receipt of the report, YCC 78 is to undertake an investigation to determine the source of the odour and to then take reasonable steps to mitigate the infiltration.

### **Costs**

[27] Both Ms. Parachuk and Mr. Karakoc represented themselves in this matter and neither requested any costs. Therefore, only Rule 48.1 of the Tribunal's Rules of Practice is relevant in this case:

If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

Ms. Parachuk's application was not successful and therefore she is not entitled to reimbursement of the Tribunal fees she paid.

### **C. ORDER**

[28] The Tribunal Orders that:

1. Under s. 1.44 (2) of the Act, should YCC 78 receive a report prepared by a qualified professional which confirms the infiltration of odour into Mickey

Parachuk's unit at levels that exceed generally accepted exposure limits, within 60 days of the report's receipt, YCC 78 shall undertake an investigation to determine the source of the odour and then shall take reasonable steps to mitigate the infiltration.

---

Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: December 18, 2023