

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 11, 2024

CASE: 2024-00468N

Citation: Sorella v. Peel Condominium Corporation No. 472, Bonafede, 2024 ONCAT 183

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

Member: Mary Ann Spencer, Member

The Applicants,

Louie Sorella and Maria Sorella
Self-Represented

The Respondents,

Peel Condominium Corporation No. 472
Represented by Darlene Mezzabotta, Paralegal

Richard Bonafede
Self-Represented

Hearing: Written Online Hearing – September 17, 2024, to November 20, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicants, Louie and Maria Sorella, are the owners of a unit of Peel Condominium Corporation No. 472 (“PCC 472” or the “corporation”). They allege that their next-door neighbour, the Respondent, Richard Bonafede, is creating a nuisance in violation of section 117 (2) (b) of the *Condominium Act, 1998* (the “Act”) and Rule 5 of PCC 472’s Rules. Mr. Bonafede has constructed a litter box in his backyard which abuts the privacy fence separating his property from the Sorellas’ property. Mr. Bonafede’s dogs urinate on the privacy fence. Mr. Bonafede collects their feces and stores them in containers located near the litter box. The Sorellas allege that the resultant odour is a nuisance which interferes with their use and enjoyment of their backyard. They further allege that PCC 472 has failed to properly investigate their complaints and to enforce its Rules. They are requesting that the Tribunal order Mr. Bonafede to remove the litter box and to

cease storing dog waste containers outdoors. They further request that the Tribunal order PCC 472 to enforce its Rules and to improve its record-keeping practices with respect to complaints. They also ask the Tribunal to order PCC 472's directors to take further training. Finally, they request their costs in this matter and compensation for damages.

- [2] Mr. Bonafede requests that this matter be dismissed without costs. His position is that he routinely takes steps to clean and disinfect the privacy fence and the litter box and that multiple investigations have found no evidence of unreasonable odour. He submits that PCC 472 had no basis on which to send him a compliance letter in August 2024, and in this regard, he requests the Tribunal issue a 'penalty' to PCC 472.
- [3] PCC 472's position is that no orders should be issued against it because it has actively investigated the Applicants' complaints and has taken appropriate action. It requests its costs in this matter.
- [4] I find that the evidence does not support the existence of unreasonable odour of dog waste. However, I find that in violation of Rule 5 of PCC 472's Rules, Mr. Bonafede is creating a nuisance by allowing his dogs to urinate on the privacy fence located between his property and the Applicants' and by then spraying it with chemical cleaners which migrate to the Applicants' property. Therefore, I am ordering Mr. Bonafede to move the litter box away from the privacy fence, to cease allowing his dogs to urinate on the fence, and to cease spraying the fence with chemical cleaners. I also find that while PCC 472 did take reasonable steps to investigate the Applicants' complaints, their communication with the Applicants was inadequate. However, I issue no orders in this regard. Finally, I order Mr. Bonafede to pay \$200 to the Applicants in respect of their Tribunal fees and \$100 as compensation for damages. I order no other costs in this matter.

B. BACKGROUND

- [5] PCC 472 is a 74-unit townhouse community. The Sorellas' and Mr. Bonafede's backyards, which are exclusive-use common elements, are separated by a wooden privacy fence. In the spring of 2023, Mr. Bonafede constructed a gravel-filled litter box which abuts that fence. The box is used by two large dogs. The dogs' custody is shared with Mr. Bonafede's ex-wife; generally, they spend two weeks at Mr. Bonafede's home and then return to his ex-wife's home for two weeks.
- [6] Mr. Bonafede described a detailed routine he follows to clean the litter box which I note he refers to as a "rock garden." He testified that he immediately removes dog

feces and places them in a closed “diaper genie”, a lidded bin designed specifically to control waste odours. When the “diaper genie” is full, its bagged contents are transferred to a closed trash bin until the trash is picked up by the municipality. The trash is picked up every two weeks. Both the “diaper genie” and trash bin are stored in Mr. Bonafede’s backyard. Mr. Bonafede sprays the “diaper genie” with bleach and a scented cleaner each time he changes its bag. He also hoses down both the litter box and the privacy fence with the bleach and scented cleaner twice daily. Once a week he uses an enzymatic liquid to neutralize any residue in the litter box.

- [7] On August 27, 2023, Louie Sorella e-mailed PCC 472’s condominium manager, Reshma Sumair, and complained about odour emanating from the litter box. On August 29, 2023, Ms. Sumair wrote to Mr. Bonafede with respect to the “foul smell coming from backyard”, advised that it was essential that common element areas be kept clean, and asked for his co-operation.
- [8] On April 29, 2024, Louie Sorella wrote again to Ms. Sumair and advised that the Applicants were unable to sit outside because of the smell of ammonia coming from Mr. Bonafede’s property. He asked the corporation to address the situation. On May 10, 2024, Mr. Sorella again wrote to Ms. Sumair and asked what was being done. He requested that someone come to his property to investigate. He noted that the odour was a particular problem for individuals with respiratory issues and advised that he had contacted the health department. Ms. Sumair responded the same day and advised that she would “review the issue and act accordingly.”
- [9] On May 10, 2024, at Ms. Sumair’s request, Todd Wasylciw, the president of PCC 472’s board of directors, walked through both properties but noticed no odour. On May 14, 2024, he met with Mr. Bonafede and again noticed no odour. He wrote to Mr. Sorella and advised that he had spoken to Mr. Bonafede and that once he had the board’s consensus on its response, he would “get back” to him. Mr. Sorella’s response was to reiterate that he could not leave the sliding door to his patio open, that ammonia was hazardous to the health of individuals with respiratory problems, and that he would take legal action if nothing was done.
- [10] On or about May 13 or 14, 2024, Kevin Strain, a member of the corporation’s board of directors, attended at the Sorellas’ property to investigate the odour. Mr. Strain’s testimony is that he sat in their backyard for 45 minutes but detected no odour.
- [11] On May 14, 2024, the Sorellas contacted the municipality with the result that an inspection of Mr. Bonafede’s property was conducted by its Animal Services

department on May 31, 2024. The report's conclusion was that there were no by-law contraventions. The municipal record notes that the inspector later advised the Sorellas that Animal Services' jurisdiction is only related to feces being picked up and disposed of, and that concerns about garbage odour should be sent to the municipality's Compliance and Licencing department.

- [12] On June 23, 2024, Mr. Sorella again e-mailed Ms. Sumair and stated that while the dogs had not been present for four weeks, he anticipated their return and with them, the return of odour. He stated that he could not use his backyard and that the ammonia was affecting his health. He reiterated that if nothing was done, he would take legal action. Ms. Sumair replied the following day stating that the owner had been given steps to take but that as the issue was ongoing, she would follow up with the board. Mr. Sorella replied that no steps had been taken and that the fence dividing the properties smelled like urine. On June 24, 2024, Mr. Wasylciw visited the Sorella's property. In her June 26, 2024, reply to Mr. Sorella, Ms. Sumair wrote that Mr. Wasylciw had advised her that Mr. Sorella had told him there was no current issue. Mr. Sorella wrote back denying that he had ever indicated the issue was not ongoing. He advised that the odour was embedded in the fence dividing his property from Mr. Bonafede's. Ms. Sumair then advised that the matter would be referred to the board.
- [13] On July 4, 2024, Ms. Sumair e-mailed Mr. Sorella and advised that the matter had been discussed at the previous day's board meeting. She requested that the Sorellas "submit all relevant documentation that indicates that the dogs are contributing to a health concern in the household for the Board's review and the corporation's records." She also advised that the corporation had a plan to replace the privacy fences throughout the complex. The fences have not yet been replaced.
- [14] The Sorellas proceeded to contact the Condominium Management Regulatory Authority of Ontario (the "CMRAO") to file a complaint. On July 11, 2024, the CMRAO closed their file noting that Ms. Sorella had been advised that the matter fell within the Tribunal's jurisdiction. Ms. Sorella subsequently filed her application with the Tribunal.
- [15] On August 22, 2024, PCC 472's board of directors sent a compliance letter to Mr. Bonafede. The letter states that although the evidence of unreasonable odour was "inconclusive", the board determined that the placement of the litter box and "waste pail" in the backyard was a violation of the corporation's Rules. Further, the board determined that regardless of odour, the litter box would "reasonably be considered a nuisance and disturbance to another owner's quiet use and

enjoyment of their backyard.” The letter then demands that, by no later than August 29, 2024, Mr. Bonafede permanently remove the litter box and waste pail and cease allowing the dogs to relieve themselves in the backyard. The letter warned that failure to comply could result in further action including declaring the dogs to be a nuisance and requiring their permanent removal from the premises. Mr. Bonafede has not complied with the board’s demands.

C. ISSUES & ANALYSIS

[16] The issues to be decided in this matter are:

1. Is the Respondent, Richard Bonafede, creating an unreasonable nuisance, annoyance or disruption in the form of odour in violation of s. 117 (2) (b) of the Act and/or PCC 472’s Rule 5? If so, what orders should the Tribunal make?
2. Has Peel Condominium Corporation No. 472 met its obligations under the Act and their governing documents? If not, what orders should the Tribunal make?
3. Should costs and/or compensation for damages be awarded?

While the Sorellas provided documents relating to the health effects of various chemicals and, as set out above under “Background”, referred to the effects of ammonia on their health in some of their correspondence, I advised the parties that the Tribunal’s jurisdiction, which is established in Ontario Regulation 179/17, does not extend to disputes relating to health and safety and therefore I would only be considering evidence relating to the issue of odour.

[17] This is a case of an unfortunate escalating dispute between neighbours. Mr. Bonafede is a member of PCC 472’s board of directors, a fact which the Sorellas believe may have unduly influenced the corporation’s response to their complaints. Mr. Bonafede believes the board unfairly sent him the August 22, 2024, compliance letter only to insulate the corporation from liability in this matter. When I asked the parties to identify witnesses in this matter, Mr. Bonafede named Mr. Wasylciw and Mr. Strain. Tony Bui, then PCC 472’s counsel in this proceeding, objected to Mr. Wasylciw on the basis that he had not been a member of the board in 2023 when the Sorellas initially complained to the corporation. I allowed Mr. Wasylciw to testify. Mr. Bonafede indicated he would require a summons for Mr. Strain. Mr. Bui then advised that Mr. Strain was prepared to testify on PCC 472’s behalf. Given their subsequent testimony, I later had Ms. Mezzabotta, who replaced Mr. Bui as the corporation’s representative, confirm that a quorum of the

board was directing the corporation's submissions in this matter.

Issue 1: Is the Respondent, Richard Bonafede, creating an unreasonable nuisance, annoyance or disruption in the form of odour in violation of s. 117 (2) (b) of the Act and/or PCC 472's Rule 5? If so, what orders should the Tribunal make?

[18] The Sorellas allege that Mr. Bonafede is creating unreasonable odour in violation of both s. 117 (2) (b) of the Act and Rule 5 of PCC 472's Rules. Section 117 (2) (b) 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 prescribes odour as a nuisance, annoyance or disruption "if it is unreasonable." The Act does not define 'nuisance'. 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.

Rule 5 of PCC 472's Rules states:

Owners, their families, guests, visitors and servants shall not create or permit the creation of or continuation of any noise or nuisance which, in the opinion of the board or the manager, may or does disturb the comfort or quiet enjoyment of the property by other owners, their families, guests, visitors, servants and persons having business with them.

[19] Ms. Sorella testified that the odour of dog feces and urine emanating from the litter box in Mr. Bonafede's backyard has prevented her from using her backyard without wearing an N95 mask. She stated that the smell migrates into the Sorellas' home if their windows or patio door, which she indicated is located approximately

one meter from the litter box, are open. Further, she testified that the bleach and cleaner which Mr. Bonafede uses to clean the litter box only mask the odour of dog waste. She noted that the cleaning solutions enter her yard when Mr. Bonafede hoses down the privacy fence. In particular, she testified that her garden along the portion of the fence where the litter box is located is dying as a result. She submitted photographs to support her testimony.

- [20] The focus of Ms. Sorella's testimony was on what she characterized as a lack of response by the corporation to the Applicants' complaints. The only independent evidence she provided of the existence of the odour of dog waste was in the form of an undated letter sent to Ms. Sumair by a neighbour. That letter states that when the neighbour visited Ms. Sorella, they had been unable to sit outside due to the odour. The neighbour did not testify in this matter. Ms. Sorella also provided copies of text messages with Mr. Bonafede's former wife which encourage Ms. Sorella to pursue the issue but which do not indicate that the former wife had any direct knowledge of the alleged odour.
- [21] Mr. Bonafede's testimony is that on one occasion in early May 2024, he did delay disposing of his dogs' waste because he missed the garbage pick-up day. He admits that there was odour on that particular occasion which he testified he addressed by taking his garbage directly to the municipality's dump.
- [22] Mr. Wasylciw and Mr. Strain both testified that they detected no odour when they investigated in response to the Sorella's complaints. Mr. Wasylciw testified that he first investigated on May 10, 2024, when the board was notified about the Sorellas' complaint by Ms. Sumair. He testified that fellow board member Janice Monteiro, who resides on the other side of the Sorellas had told him that she had noticed the odour the week before. Mr. Wasylciw testified that he detected no odour when he attended at the properties on May 10th. On May 14, 2024, Mr. Wasylciw went to Mr. Bonafede's property and again detected no odour. After Mr. Sorella complained to Ms. Sumair on June 23, 2024, Mr. Wasylciw visited them on June 24, 2024, and again found no odour. However, he asked the Sorellas to contact him if they noticed odour and gave them his personal contact details. He testified that he was never contacted.
- [23] Mr. Strain testified that on either May 13 or 14, 2024, he visited the Sorellas and although he spent 45 minutes sitting on their patio, he could detect no odour. Ms. Sorella denied that Mr. Strain could have been present on May 13, 2024, and provided detailed information to document why this was not possible. For example, she provided a receipt to prove that the Sorellas did not have the patio table she indicated Mr. Strain had testified he sat at. However, Mr. Strain's testimony does

not include this statement. Ms. Sorella did not claim that Mr. Strain did not visit on any occasion. Therefore, I accept his testimony which does note his uncertainty about the date he visited.

- [24] Mr. Bonafede and his son, Alejandro Bonafede, both testified about the detailed steps they take to dispose of the dogs' waste and to clean both the litter box and the privacy fence. Other than Mr. Bonafede's admission that he missed the garbage pick-up once in May, both deny that there is any odour and testify they regularly use their own backyard.
- [25] Mr. Bonafede also testified that when the municipality's Animal Services inspector investigated on May 31, 2024, they confirmed there was no odour. The visit by Animal Services is somewhat contentious between the parties. Mr. Bonafede appears to believe that the Sorellas reported him to Animal Services. Ms. Sorella's testimony is that she called the municipality's 311 line and, unbeknownst to her, they referred the matter to Animal Services. Regardless of how the referral took place, the municipal report entered into evidence indicates only that the inspector found no issues within their jurisdiction which is to enforce the by-law requirement that dog waste be picked up and disposed of properly. There is no indication that they investigated for evidence of odour and in fact the report indicates they referred the Sorellas to another municipal department with that jurisdiction.
- [26] Mr. Bonafede submits that it can be inferred that the Sorellas have a heightened sense of smell because Mr. Sorella's e-mails to Ms. Sumair mention respiratory issues. This is speculation. Mr. Bonafede further testified that his former wife has a similar litter box at her home and has received no complaints from her neighbours. However, this testimony is not relevant to whether the Sorellas are experiencing odour. There is no evidence that conditions at his former wife's home are the same as those at his property.
- [27] The perception of odour is necessarily subjective and therefore independent evidence is important to establish that odour is unreasonable. The Sorella's position is that it is self-evident that dog waste has an offensive odour. However, the onus is on them to prove that the odour is unreasonable. Factors such as the frequency and duration of the odour must be considered.
- [28] I find that the evidence does not support that the Sorellas are experiencing unreasonable odour of dog waste; while they provided a letter from a neighbour who had visited them and subsequently wrote to Ms. Sumair about odour, and while Mr. Wasylciw testified that fellow board member Ms. Monteiro had noticed odour, neither of these individuals testified in this matter. Mr. Bonafede admitted to an early May 2024 instance when he failed to put out his garbage. The timing of

this lapse coincides with Ms. Monteiro's reported experience. The neighbour's letter is undated and therefore it cannot be determined whether it relates to the same lapse. Mr. Wasylciw's and Mr. Strain's affirmed testimony is that they perceived no odour when they investigated. Ms. Sumair also testified that when she was at the property on July 18, 2024, that she noticed no odour. Further, Mr. Wasylciw testified that although he asked the Sorellas to contact him when they noticed odour, he heard nothing further from them. There is no independent evidence that there is either a frequent or persistent occurrence of the odour of dog waste. While Mr. Bonafede's delay in disposing the waste in May 2024 was undoubtedly an annoyance, one incident is insufficient to make a finding of unreasonable odour.

- [29] The Sorellas also raised the issue of the odour of the solutions Mr. Bonafede uses to clean both the litter box and the privacy fence separating their backyards. They submitted photographic evidence of one of the dogs urinating on the fence. Mr. Bonafede testified that he sprays the wooden privacy fence twice daily, first with bleach and then with a scented cleaner. His son testified that he hosed down "the area" with both substances each time the dogs "did their business." This testimony strongly suggests that the dogs regularly urinate against the fence. Further, the July 27, 2024, minutes of PCC 472's board of directors indicate that the privacy fence is damaged although the minutes state "it was not confirmed if the damage was done to the fence by dog urine."
- [30] Mr. Bonafede testified that as a result of the Stage 2 - Mediation in this case, he moved the "diaper genie" further away from the litter box. He also testified that he changed the scented cleaner he uses after learning of the Sorellas' concern that it created a toxic substance when mixed with bleach. While it is clear his actions to eliminate the odour of dog waste are well-intentioned, he does not appear to have considered that by allowing his dogs to urinate on the privacy fence and then spraying it with cleaning solutions, he is in fact encroaching on the property of the Sorellas' on a twice-daily basis. The photographs entered as evidence in this matter indicate that the wooden fence has gaps between the boards; even if the spraying of the fence is done sparingly as Mr. Bonafede attested, it stands to reason that the spray will transfer through those gaps to the Sorella's property. Ms. Sorella provided pictures of her garden which appears to be dying next to the area of the fence which is sprayed. While she believes this is due to run-off from the hosing down of the litter box itself, which I note is slightly raised and is directly against the fence, I find it is equally probable that it is due to the twice-daily spraying of the fence.
- [31] While I find that the issue of unreasonable odour of dog waste has not been

proven, I do find that Mr. Bonafede's mitigation activities to prevent that odour are creating a nuisance contrary to Rule 5 of PCC 472's Rules. The frequency of the transfer of cleaning solutions through the privacy fence into the Sorellas' backyard is an unreasonable interference with their quiet enjoyment of their property.

- [32] In its August 22, 2024, letter to Mr. Bonafede, PCC 472's board of directors directed Mr. Bonafede to permanently cease allowing his dogs to relieve themselves in his backyard and to permanently remove the litter box and waste pail from it by no later than August 29, 2024:

The Litter Box and Waste Pail in your backyard are prohibited by Rule 4. Moreover, by allowing your dog to relieve itself in the backyard, the Board has determined that this is a nuisance as contemplated by Rules 5 and 6: whether or not these activities create odours, the placement and proximity of your dog's urine/feces would reasonably be considered a nuisance and disturbance to another owner's quiet use and enjoyment of their backyard.

Mr. Bonafede did not comply with the deadline. Rather, his response to PCC 472 was to indicate his intent to formally dispute their demands. I asked if the corporation had taken any further compliance action and was advised they had not.

- [33] PCC 472 led no evidence with respect to the August 22, 2024, letter other than Ms. Sumair's testimony that it had been sent. While Mr. Bonafede did address the letter, submitting that it was not sent in good faith because there are no corporation Rules which prohibit dogs from relieving themselves on the common elements, I make no findings with respect to that issue or to whether or not the placement of the litter box and waste pails in the backyard is prohibited by the corporation's Rules.
- [34] My finding is that the steps Mr. Bonafede takes to clean the privacy fence and the litter box result in the migration of cleaning solutions into the Sorellas' backyard and comprise a nuisance in accordance with Rule 5 of the corporation's Rules. However, simply ordering Mr. Bonafede to cease taking the odour mitigation steps may only result in the creation of unreasonable odour of dog waste, particularly if the dogs are allowed to continue to urinate on the privacy fence. Mr. Bonafede himself testified that the mitigation steps are taken to eliminate what he acknowledges would be offensive odour if they were not taken. Therefore, I am ordering Mr. Bonafede to move the litter box and waste containers to an area at least one meter's distance from the privacy fence dividing his property from the Sorellas', to cease allowing his dogs to urinate on the fence, and to cease spraying the fence with cleaning solutions.

- [35] In addition to requesting that I order the removal of the litter box and waste containers, the Sorellas requested that I issue a conditional order; that if Mr. Bonafede failed to comply, that the Tribunal would order the permanent removal of his dogs. They also requested that I order PCC 472 to monitor Mr. Bonafede's compliance and report back to the Tribunal within 30 days of the date of the Tribunal's decision. While I am ordering Mr. Bonafede to move the litter box and waste containers, to cease allowing his dogs to urinate on the privacy fence, and to cease spraying the fence with cleaners, I am not issuing further orders with respect to his compliance. The Tribunal does not have jurisdiction to enforce compliance with its orders; that jurisdiction rests with the Superior Court of Justice.

Issue 2: Has Peel Condominium Corporation No. 472 met its obligations under the Act and their governing documents? If not, what orders should the Tribunal make?

- [36] The Sorellas submit that the corporation did not undertake a proper investigation of their complaints and that it failed to enforce its Rules. They further submit that the corporation failed to properly document their complaints, highlighting that there is no reference to them in the minutes of board meetings until July 3, 2024. They are requesting that the Tribunal order the corporation to enforce its Rules and to take steps to improve its record-keeping practices. They also request that the Tribunal order mandatory training for the members of its board of directors.
- [37] Section 17.3 of the Act requires a corporation to take reasonable steps to ensure compliance with its governing documents:

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.

PCC 472 submits that it that it acted reasonably in responding to and addressing the Applicants' complaints, thereby fulfilling its obligations under the Act and its governing documents.

- [38] The Sorellas' first complaint was sent to Ms. Sumair on August 27, 2023. The evidence is that she responded the following day and advised Ms. Sorella that she would contact Mr. Bonafede. On August 29, 2023, Ms. Sumair sent a letter to Mr. Bonafede advising of the complaint, reminding him of his obligations in a condominium setting and asking him to co-operate. There is no evidence that the corporation conducted any investigation before sending this letter. Nor is there any evidence that any follow-up was conducted with either the Sorellas or Mr.

Bonafede. Rather, because the Sorellas did not contact Ms. Sumair again until April 29, 2024, the corporation apparently and perhaps reasonably considered the matter closed.

- [39] Mr. Sorella did e-mail a further complaint to Ms. Sumair on April 29, 2024. Ms. Sumair testified that between April 29, 2024, and June 24, 2024, “management has been consulting with the Board to discuss the complaints and any appropriate actions”. Ms. Sumair’s testimony somewhat overstates what the evidence indicates actually took place. That evidence is that she did notify the board about the complaint on May 10th and that both Mr. Strain and Mr. Wasylciw investigated on or about May 14, 2024. However, there is no evidence before me that any response from the corporation was sent to the Sorellas to advise them that these directors found no odour.
- [40] On May 14, 2024, Mr. Wasylciw did send an e-mail to Mr. Sorella in which he wrote that he could find “nothing in the bylaws or rules to address a strong reaction to this” but that once he had a consensus response from the board he would speak to Mr. Sorella. There is no evidence before me that he did so. Mr. Wasylciw testified that Ms. Sumair sent an e-mail on May 15, 2024, to the Sorellas advising that the situation would be monitored. However, Ms. Sumair did not mention this e-mail in her testimony and no copy of it was submitted as evidence. Nor is there any evidence, in the form of board minutes, for example, that the matter was under any active discussion, although Mr. Wasylciw testified that the board agreed that Ms. Monteiro would report “if she smells anything moving forward.”
- [41] With respect to Mr. Sorella’s June 23, 2024, e-mailed complaint, Ms. Sumair’s next-day response was that that the issue had been followed up on and Mr. Bonafede had been given “steps to take.” There is no evidence to indicate that Mr. Bonafede had been formally advised of any steps he needed to take. Mr. Wasylciw’s testimony is that he left Mr. Bonafede’s “feeling this owner has gone above and beyond in his attempt to appease his neighbours.” Mr. Bonafede’s testimony is that after he received Ms. Sumair’s August 29, 2023, letter, he received nothing further until the August 22, 2024, letter from the board demanding the removal of the litter box and waste pails.
- [42] The day after the June 23, 2024, complaint, Mr. Wasylciw again visited the Sorellas. The matter was then discussed at the board meeting on July 3, 2024, and the Sorellas were sent a follow-up e-mail by Ms. Sumair on July 4, 2024. I note that it did not directly address the odour complaint; rather it asked for documentation with respect to the health effects Mr. Sorella had previously cited in his correspondence.

- [43] In these circumstances, where it appears the Sorellas were never formally informed that the directors had found no evidence of odour, it is understandable that the Sorellas believe that the corporation failed to address their complaint. However, there is no legislated requirement that a corporation must undertake a formal investigation with the specific steps which Ms. Sorella, who set these out in her submission, believes are necessary. What is problematic is that the Sorellas were not apprised in writing of the board's findings and that, if in fact Mr. Bonafede was asked to take any steps, that these too were not in writing.
- [44] I find that the corporation's investigation of the Sorellas' complaint was inadequate to the extent that the Sorellas were not provided with clear communication about the corporation's findings. As a result, with some justification, the Sorellas mistakenly believe that their complaints were not addressed. However, the process gaps were in communication, not in investigation. While it would behoove the corporation to document its findings and inform complainants accordingly, I find that there is no reason to issue orders to the corporation in that respect.
- [45] Ms. Sorella expressed concern that the minutes of PCC 472's board meetings do not include reference to the Sorellas' initial complaints. There is no requirement that every complaint a corporation receives be documented in its board minutes.
- [46] Ms. Sorella also questioned that the corporation did not send a letter setting out rule violations to Mr. Bonafede until August 22, 2024, and that it has made no subsequent effort to follow up to obtain his compliance. Ms. Sorella believes this letter was sent too late; Mr. Bonafede believes it was sent only to shield the corporation from liability in this proceeding, testifying that two directors advised him accordingly. Regardless of why the letter may have been sent, as noted above in paragraph 33, the alleged Rule violations set out in the letter were not the issues before me and therefore I make no finding with respect to its timing or to its content.
- [47] Finally, Ms. Sorella requested that I order training for the board's directors. I find no reason to do so. While Mr. Wasylciw's May 14, 2024, e-mail to Mr. Sorella indicates that he was "still learning this part of the job" as a new director, there is no evidence before me to indicate that the corporation's directors do not understand their obligations under the Act.

Issue 3: Should costs and/or compensation for damages be awarded?

- [48] The Sorellas request reimbursement of the \$200 they paid in Tribunal fees, \$363 in legal fees and \$45.74 for stationery costs. They also request reimbursement of \$1,170.40 spent on a weekend trip and \$450 to "clean and replace the flower bed

which is embedded with urine.” PCC 472 requests its legal costs of \$19,272.15 on a full indemnity basis. Mr. Bonafede requests no costs; however, he requests the Tribunal issue a ‘penalty’ of \$5,000 to PCC 472 for sending the August 29, 2024, letter “in bad faith.”

[49] The cost-related rules of the Tribunal’s Rules of Practice applicable to this case are:

48.1 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.

48.2 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.

[50] The Sorellas were successful in this matter. I am ordering Mr. Bonafede to cease allowing his dogs to urinate on the privacy fence separating his property from the Sorellas’, to cease spraying that fence with chemical cleaners, and to move the litter box and waste pails a distance of one meter from it. Therefore, in accordance with Rule 48.1, I am ordering Mr. Bonafede to pay the Sorellas \$200 in respect of their Tribunal fees.

[51] The award of costs is discretionary. In considering whether costs should be awarded, I am guided by the “Tribunal’s Practice Direction: Approach to Ordering Costs” which, among the factors to be considered, includes: the conduct of all parties and representatives; whether the parties attempted to resolve the issue in dispute before the CAT case was filed, the potential impact an order for costs would have on the parties and the provisions of the corporation’s governing documents.

[52] Rule 48.2 is clear that the Tribunal will not generally award legal fees or disbursements. The Sorellas were not represented by counsel in this matter. While Ms. Sorella did provide documents to substantiate that they sought some advice later in the proceeding, I find no reason to award them either their requested legal fees or stationery costs.

[53] In accordance with s. 1.44 (1) 3 of the Act, the Tribunal may order compensation for damages incurred by a party to the proceeding as a result of an act of

noncompliance. The Sorellas request reimbursement of \$1,170.40 spent on a weekend trip which Ms. Sorella advised was necessary as relief from living with the odour in her backyard. I have found there is no evidence of unreasonable odour and therefore am not considering this request. She also requested \$450 to replace the damaged portion of her garden. There is no evidence that the garden is “urine-soaked” as she submitted. However, she did submit evidence of dying plants which I find, on a balance of probabilities, is due to the transfer of cleaning solutions through the fence. As compensation for damages, I award her \$100 to replace the plants.

- [54] PCC 472 requests \$19,272.15 in legal fees on a full indemnity basis to be paid jointly and severally by the Sorellas and Mr. Bonafede. Ms. Mezzabotta submits that the corporation was inappropriately named in what is a personal dispute between the other parties and that it attempted to resolve this matter by asking Mr. Bonafede to stop allowing his dogs to relieve themselves in his backyard, which he refused to do. The corporation also submits that it exercised restraint by assigning a paralegal for the Stage 3 – Tribunal Decision proceeding, although I note that 17 of the 43.5 hours claimed with respect to the Stage 3 – Tribunal Decision proceeding were incurred by legal counsel.
- [55] While Ms. Mezzabotta submitted that the number of documents entered in this matter drove the corporation’s legal costs higher, I find that the legal fees claimed, which total 17 hours for the Stage 2 – Mediation, and 43.5 hours for the Stage 3 – Decision proceeding, are disproportionate to the issue being addressed, although I acknowledge that there were six witnesses and that the proposed cross-examination questions submitted by Ms. Sorella and Mr. Bonafede both required some time to review. However, there were no issues with the conduct of the parties in this matter, notwithstanding that both Ms. Sorella and Mr. Bonafede took issue with the motivation and behaviour of other parties in their submissions.
- [56] I acknowledge that legal costs not awarded to the corporation ultimately will be expensed to its owners, including the Sorellas and Mr. Bonafede. However, I find no reason to award costs to the corporation. While I am issuing no orders against PCC 472, I have found that its lack of clear communication with the Applicants was a factor contributing both to their belief that their complaint was not being properly addressed and to their decision to make application to the Tribunal. I also note that the orders I am issuing are to remedy a breach of Rule 5 of the corporation’s Rules. While the corporation led no evidence with respect to the August 22, 2024, letter to Mr. Bonafede, that letter cites breaches of the same Rule. This belies Ms. Mezzabotta’s submission that this case was a “neighbourly dispute.”

[57] Mr. Bonafede requested that I order PCC 472 to pay him a 'penalty' of \$5,000 for sending him the August 22, 2024, letter "in bad faith." I am not issuing this order. As noted above in paragraph 33, the alleged rule violations in that letter were not the subject of this matter. Moreover, the Act only provides the Tribunal with the authority to issue a penalty when it has found that a corporation has refused to provide records without reasonable excuse.

D. ORDER

[58] The Tribunal orders that:

1. Under section 1.44 (1) 2 of the Act, Richard Bonafede shall immediately cease allowing his dogs to urinate on the privacy fence located between his backyard and the backyard of Louie and Maria Sorella. He shall also immediately cease spraying the privacy fence with chemical cleaners.
2. Under section 1.44 (1) 2 of the Act, within 21 days of the date of this decision, Richard Bonafede shall move the dogs' litter box at least one meter away from the privacy fence.
3. Within 30 days of the date of this decision, Richard Bonafede shall pay \$300 to Louie and Maria Sorella, comprised of \$100 as compensation for damages under section 1.44 (1) 3 of the Act and \$200 as reimbursement of Tribunal fees under section 144 (1) 4 of the Act.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: December 11, 2024