

Condominium Corporation Seeks Court Order Requiring Mental Examination of Unit Owner

In a recent case, [TSCC No. 2395 v. Wong](#), a condominium corporation that was dealing with a unit owner whose behavior had become increasingly threatening, abusive, intimidating and dangerous, applied to the Court for an order that the unit owner undergo a mental health examination by a medical practitioner. The corporation requested the mental health exam to enable the Court to determine if it was necessary to appoint a litigation guardian because the unit owner was mentally incapable.

The corporation claimed that the unit owner caused a disturbance at the annual meeting by attempting to photograph people without consent, left threatening voice mail messages, kicked the door of the management office, knocked on the doors of other residents at inappropriate times, alleged that flies and gas were injected into her unit and engaged in strange behaviour in the condominium lobby, including singly loudly and pacing in the lobby, sleeping in the lobby with a table on top of her and rearranging the lobby furniture.

After noting that an order for a mental examination would only be made in exceptional circumstances and not be made lightly, the Court declined to grant the order as the unit owner's "behaviour on its own is not a sufficient evidentiary basis to make the invasive and rare order that she undergo a mental examination." The Court noted that there was no evidence that the unit owner's mental health was relevant to the material issue in the court proceedings.

The corporation had also applied for an injunction and a compliance order under section 134 of the Condominium Act, 1998 (the "Act") prohibiting the unit owner from:

- having any direct or any indirect contact with any employee, manager, security personnel or board member ("**TSCC 2395 Personnel**");
- coming within 25 feet of the management office; and
- disturbing the comfort and enjoyment of the common elements,

as well as a declaration that:

- the unit owner's behavior constituted workplace harassment;
- the unit owner had breached section 117 of the Act by engaging in conduct that was likely to damage property or cause injury to TSCC 2395 Personnel or to other residents; and
- the unit owner had breached the corporation's rules by creating noise and nuisance and disturbing the comfort and quiet enjoyment of other residents.

The injunction and compliance order were granted by the Court as the corporation had demonstrated that irreparable harm (i.e. increased risk of personal injury or assault or psychological harm) to TSCC 2395 personnel and other residents would result if the injunction and compliance order were not granted. The declaration requested was also granted and the corporation was awarded costs in the amount of \$16,621. Fortunately for the corporation, the unit owner's mental health status did not impede the Court in making these orders.

As no one attended the hearing on the owner's behalf, the Judge directed the corporation to post the court decision and the order on the unit owner's front door, as well as sending a copy by mail. While the corporation was successful in obtaining the injunction, compliance order and declaration, only time will tell if the unit owner in fact complies with the court order.

However, as set out in subsection 134(5) of the Act, any unpaid costs can be added by the corporation to the common expenses for the unit, and if not paid, then the corporation will be able to register a lien against the unit.