

Condo Disputes – Litigation May Not be the Ideal Solution

In a [recent case](#), a condominium corporation that incurred costs in the amount of \$27,942 relating to a dispute with an owner was not awarded any costs at all, as the Court determined that the corporation should not have commenced legal proceedings in the first place.

The corporation had notified the owner that it required access to her unit to conduct an inspection of fire separations and plumbing between her unit and the unit above. However, the corporation did not advise the owner as to why this access and inspection was necessary and for this reason the owner refused access. The corporation then commenced legal proceedings to obtain a court order giving it permission to enter the owner's unit.

Before the court application date the owner granted permission to enter her unit as long as she was present during the inspection. During the inspection a hole was cut into the ceiling of the owner's bathroom, which had recently been renovated with expensive imported finishes. Further access to the owner's unit was required to repair plumbing to the unit above and to restore the drywall.

The corporation then arranged for a plumber to attend to conduct the plumbing repairs on the same day as the court application was scheduled. Although the owner requested that the plumber's visit be rescheduled to another day when she could be present, this was not done – the plumber showed up at her unit but was unable to gain access.

At the hearing the corporation was awarded costs in the amount of \$9,000. The owner appealed this costs award and was 100% successful as the original costs award was set aside and no costs were awarded to either party.

The Divisional Court determined that as this was a simple practical matter that did not involve any important legal principles, management should have explained to the owner why access was needed and should have made more efforts to resolve this matter before commencing legal proceedings: “. . . there was a precipitous and premature resort to legal action (and thus legal fees)”.

There are several lessons to be learned from this case:

- Although [section 19 of the Condominium Act, 1998](#) gives the corporation the right of entry to units upon reasonable notice “to perform the objects and duties of the corporation or to exercise the powers of the corporation”, the corporation should advise owners as to why access is required and should also attempt to accommodate reasonable requests from owners about scheduling access.
- The corporation and management should make concerted efforts to resolve issues with owners before resorting to litigation with the expectation that the owner will be footing the bill.