

Condo Owner Ordered to pay \$20,000 in Costs After Unsuccessfully Suing Condo Corporation for Harassment

In a recent Small Claims Court case, [Wexler v. C.C.C. No. 28](#), a condominium corporation that had to undertake enforcement measures to get an owner to comply with the condominium documents and [the Condominium Act, 1998](#) (the “Act”) found itself being sued by the owner who claimed that the corporation’s conduct constituted harassment.

The corporation had written numerous letters to the owner demanding that she remove a pigeon nest from her balcony, clean up the mess made by the pigeons and install netting on her balcony to prevent pigeons from entering her balcony. The owner’s inadequate efforts to clean her balcony resulted in droppings, feathers and water landing on the balconies below. Ultimately the corporation hired a contractor to install netting on the owner’s balcony and clean the balconies below, and then charged the owner the costs incurred as common expenses chargeable against her unit.

[The owner then sued the corporation](#), claiming \$255 for the cleaning costs charged to her, \$270 for the costs of the owner’s consultation with a lawyer “to prevent further wrongful charges” and \$2000 for harassment.

After reviewing the case law, the Judge identified four essential elements of the tort of harassment:

- outrageous conduct by the defendant;
- the defendant’s intention to cause emotional distress;
- the plaintiff suffering severe emotional distress; and
- the plaintiff’s emotional distress being caused by the defendant’s outrageous conduct.

The Judge then reviewed various provisions of the corporation’s declaration, including a provision requiring the owner to maintain the balcony, as well as a number of provisions of the Act including:

- Section 17(3), being the corporation’s obligation to enforce the Act and the condominium documents;
- Section 19, which gives the corporation a right of entry to the unit and the common elements to perform the objects and duties of the corporation;
- Section 117, which prohibits anyone from permitting a condition to exist that is likely to damage property or cause injury to an individual; and
- Section 119, which imposes an obligation on owners to comply with the Act and the condominium documents.

The Judge ultimately concluded that none of the essential elements of the tort of harassment were present. The corporation’s conduct was not outrageous as it was merely enforcing the provisions of the condominium documents and the Act, as it was required to do by the Act. The owner’s claims for monetary compensation were also denied as the chargeback for the cleaning costs was proper and there were no wrongful charges.

Although the damages claimed in this case were approximately \$2500, the trial spanned over three days. The corporation claimed full indemnity of its legal costs in the amount of \$35,495 on the basis that the condominium declaration specifically provided that an owner would fully indemnify the corporation for any costs or damages resulting from an owner's act or omission. The corporation also argued that anything less than full indemnity would be unfair as all of the other owners would have to bear the costs of this unsuccessful lawsuit commenced by one owner.

As set out in section 29 of the [Courts of Justice Act](#), in Small Claims Court an award of costs does not ordinarily exceed 15% of the amount claimed unless the Court makes a higher award to penalize a party for unreasonable behaviour in the legal proceedings.

In this case the owner represented herself, which unnecessarily prolonged the trial, as she was disorganized and improperly prepared.

At the end of the day the owner was ordered to pay costs in the amount of \$20,000. The Judge noted that the owner should have been cognizant of the consequences that would ensue if she was unsuccessful in her case and she should not have had any expectation that there would be no cost consequences if she lost. Although the amount that the owner was ordered to pay was huge in comparison to the amount claimed in the lawsuit, a sizeable portion of the corporation's legal costs will end up being included in the corporation's common expenses payable by all of the owners.

Condominium owners need to realize that by owning a condominium unit, they will not have the same liberties as they would have if they owned freehold property. The condominium documents and the Act restrict some of the rights of individual unit owners in favour of the collective good of the condominium community as a whole. Compromises by owners may be necessary in order to comply with the condominium documents and the Act as non-compliance is not an option.