

# Bad Board Behaviour and How the Courts are Addressing It

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L A W Y E R S

# Section 67 “Improper Conduct”

67(1) In this section,

(a) “improper conduct” means

(i) non-compliance with this Act, the regulations or the bylaws by a developer, a corporation, an employee of a corporation, a member of a board or an owner,

(ii) the conduct of the business affairs of a corporation in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,

(iii) the exercise of the powers of the board in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,

...

(v) the exercise of the powers of the board by a developer in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party or a purchaser or a prospective purchaser of a unit;

(b) “interested party” means an owner, a corporation, a member of the board, a registered mortgagee or any other person who has a registered interest in a unit.

(2) Where on an application by an interested party the Court is satisfied that improper conduct has taken place, the Court may do one or more of the following:

(a) direct that an investigator be appointed to review the improper conduct and report to the Court;

(b) direct that the person carrying on the improper conduct cease carrying on the improper conduct;

(c) give directions as to how matters are to be carried out so that the improper conduct will not reoccur or continue;

(d) if the applicant suffered loss due to the improper conduct, award compensation to the applicant in respect of that loss;

(e) award costs;

(f) give any other directions or make any other order that the Court considers appropriate in the circumstances.

(3) The Court may grant interim relief under subsection (2) pending the final determination of the matter by the Court.

# A Note on Costs



## *Stagg v Condominium Plan No. 882-2999, 2013 ABQB 684*

- ▶ An often- cited case by owners seeking costs in improper conduct applications.
- ▶ Mr. Stokowski, one of the applicants, had been a former board member and in that role, he had paid \$15,000 from his personal funds to purchase a new hot tub for the condominium.
- ▶ For undisclosed reasons, the rest of the board refused to reimburse him.
- ▶ In a prior application the court had appointed a third-party investigator to review the conduct of the board.
- ▶ The investigator found numerous examples of improper conduct and confirmed all of the allegations of improper conduct made by Mr. Stokowski to be true.
- ▶ The parties subsequently agreed to a consent order returning Mr. Stokowski's deposit, but outstanding was costs.
- ▶ Mr. Stokowski had spent \$75,000 in legal costs and sought solicitor client costs as a reimbursement for his loss.



Costs:

\$75,000.00

(full solicitor client  
indemnification costs)



2021 / 2022  
Alberta Court  
Decisions

## 1212443 Alberta Ltd. v Condominium Corporation No 0721898, 2021 ABQB 329

### ▶ Facts

- ▶ 1212443 Alberta Ltd. owned two of nine condominium units and brought an application against the Condominium Corporation for indemnity costs as well as a consent order to replace the Condominium Board because of “failed governance” of the Board in performing its duties.
- ▶ This decision is short and does not specify how the Board failed in performing its duties.

### ▶ Decision

- ▶ The Court allowed the application, holding that “**Condominium Boards must not be encouraged to ignore their duties**” and that “**a courageous owner, forced to challenge the missteps of the Board in Court and ultimately to protect the interests of the corporation, should not be condemned to mount their campaign at a loss**” (at para 8).
- ▶ Court held that “solicitor and client costs ... is the only appropriate remedy here under s 67”

## Condominium Corporation No 082 9220 (Terwillegar Terrace) v Yan, 2021 ABQB 429

### ► Facts

- CC filed Application against Owner, Yan, for a declaration that the Owner had engaged in “improper conduct” pursuant to the *Condominium Property Act* seeking various remedies, including the removal of the Owner’s dog from the condo, requiring the Owner to cease and desist making defamatory statements against the Board and PM and an order evicting the Owner’s son.
- The alleged improper conduct related to noise complaints, complaints of her dog urinating and defecating where it should not, Ms. Yan failing to remove her vehicle from her parking stall for snow removal and the dog lunging at a child on more than one occasion. Several fines were levied against Ms. Yan’s condominium unit.
- The Condo Corp filed a seven page affidavit (not including exhibits) in support of its application. The Condo Corp representative was questioned on his affidavit, and he gave 59 undertakings. Those undertakings were not answered for approximately 10 months. He was further examined on undertakings and gave a further 46 undertakings.
- The CC and Owner tried to resolve matters but without success, and eventually the CC filed a Discontinuance of Claim without the Owners’ consent when the Board determined the cost of the ongoing litigation was too high.
- The CC later filed a Discontinuance of Claim due to the high cost of litigation.



## Condominium Corporation No 082 9220 (Terwillegar Terrace) v Yan, 2021 ABQB 429 (con't)

### ▶ Decision

- ▶ The Court found fault on the part of the CC in various aspects. Noting that while it was clear the CC had reason to take some sort of action against the Owner (due to the number of complaints received by other Owners) the "Board and the property manager **completely bungled** how they dealt with some of those complaints", specifically noting:
  - ▶ PM took actions against the Owner without Board resolutions being passed providing authorization to do so;
  - ▶ Fines were imposed when only warnings had been authorized by the Board (REMEMBER: you need a Board resolution for both the warning and the fine thereafter) ;
  - ▶ Fines were imposed in excess of what was allowed in their Bylaws; and
  - ▶ Some of the actions (but not all) were taken against Owners based only on circumstantial evidence.
- ▶ Additionally, the Court found that once litigation had commenced, they were not adequately engaged (leaving the PM to handle everything without involvement) which lead to the excessive number of Undertakings

### ▶ Award

- ▶ The Court directed the Condo to pay two-thirds of the Owner's legal costs, reasonably incurred, on a solicitor and client basis.

# *Lauder v Grand Carlisle*, 2022 ABQB 382

## ▶ Facts

- ▶ Lauder involved a case where the court found the board wasn't living up to its repair responsibilities under the Act.
- ▶ In 2014, Lauder advised the Condo Board that the windows in her unit were leaking and went back and forth with board for several years over this issue. Final repairs were completed in 2017 with one outstanding window that Lauder wanted replaced, which the Board declined to do until 2024.

## ▶ Decision

- ▶ The ABQB upheld the Master's decision, holding that the Condo failed to "keep in a state of good and serviceable repair and properly maintain the real and personal property of the corporation, the common property and managed property".
- ▶ The Court further held that the Condo violated section 67(1)(a) of the *Act* by conducting its affairs in a way that unfairly disregarded the interests of Ms. Lauder.

## ▶ Award

- ▶ found that the Board engaged in improper conduct and awarded Lauder \$5,000 in general damages. No damages were awarded for mental distress in this case.

## *Duperron v Condo Plan No 792 2641, 2022 ABQB 436*

### ▶ Facts

- ▶ The Dupperons had a bed bug infestation in their unit that stemmed from an adjacent unit and was also present in the space between the walls of the units.
- ▶ They requested the Condo Board eradicate the infestation pursuant to the Bylaws, which required the Condo Board to “maintain, repair and renew the common property” which included the space between the walls.
- ▶ The bylaws also required that each owner keep their units free of infestations, and required the Condo to ensure owners observed the bylaws.

### ▶ Decision

- ▶ The Court held that by not eradicating the bed bugs in the space between the walls, the Condo breached its duty under section 67(1) of the CPA finding that the Court both breached its duties under the Bylaws and Act by failing to address the bed bugs, but also acted improperly in unfairly disregarding the Owner’s interests by failing to obtain access to the adjacent units for the extermination of bed bugs

## *Duperron v Condo Plan No 792 2641, 2022 ABQB 436*

- ▶ Board has a positive duty to enforce the Bylaws and further to act reasonably/have reasonable policies
- ▶ There was evidence before the Court that there were bedbugs present and the CC was aware and did nothing to properly exterminate. Specifically:
  - ▶ An October 19, 2020 email from the Condominium Corporation's property manager notes that unit 402, which is adjacent to the Duperrons' unit 403, also had bed bugs and needed to be treated - noting that a Court Order could be obtained by the CC if the owner does not cooperate;
  - ▶ November 3, 2020 email from Board member stating "this is not classed as an emergency as it has been going on for months, and realistically off and on for years", and "it is concentrated only in a few units in the building, and it has been that way for many years";
  - ▶ November 12, 2020 email from Board member advising "As far as treating the whole side of the building, that will not be happening, for several reasons, the cost involved would be in the tens of thousands of dollars, every unit is privately owned, and we have no authority to force anybody out, and get into their units, for an issue they do not have. ..."
  - ▶ Numerous notes and reports from Pest Control advising that they were unable to complete the extermination due to the fact that not all Units were prepped or cooperating but Board failed to force Owners to comply/cooperate.
- ▶ This sort of inaction on enforcing the Bylaws or reasonably utilizing the tools available to it was considered improper conduct by the Court

## *Duperron v Condo Plan No 792 2641, 2022 ABQB 436*

### ▶ Award

- ▶ Court awarded Duperrons \$25,688.93 in special damages for increased insurance costs, electricity costs, bed bug treatments and inspection, and 18 months of lost rent for the period of infestation + costs were agreed between the parties
- ▶ Costs were awarded against the CC to be agreed upon between the parties but best estimate is approx. \$29,000 costs

# *Dunn v Condo Corp No 042 0105, 2022 ABQB 516*

## ▶ Facts

- ▶ The Condominium Board was required to replace the roof of a condominium building due to water ingress in 2014. The contract with the roofing company stated that work was to take place from July 2014 to November 2014, but significant delays resulted in the work taking place from October 2014 to November 2015
- ▶ The Owner was renting out his Unit (the penthouse) to a tenant who complained about noise, windows being boarded up, inability to access balcony, and heating issues during the roof construction.
- ▶ The CC argued that the interference presented by the construction was trivial, and alternatively, that it was reasonable in the circumstances and that under their obligation to keep the building in a state of good repair, nuisance from required construction would be inevitable and should be protected.

## ▶ Decision

- ▶ The Court found the Condo liable for nuisance - and that the Board was not protected by anything in the Bylaws as a result.
- ▶ Court found that there were numerous steps the CC could have taken to make the construction delays and inconvenience less.

## ▶ Award

- ▶ \$25,250.00 against the CC



# Alberta Human Rights Tribunal

# Human Rights

Human rights are governed pursuant to the *Alberta Human Rights Act*, RSA 2000, c A-25.5 (“AHRA”)

The AHRA applies to all activities between a Condominium and its owners. The Court has held that the relationship between Condominiums and Owners is “public” and therefore covered by the AHRA.

This means a person can make a human rights complaint if they have a reasonable basis to believe that the CC Board has discriminated against them.

Section 5 of the *Alberta Human Rights Act* states no person shall

- (a) deny to any person or class of persons the right to occupy as a tenant any ... self-contained dwelling unit..., or
- (b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any ... self-contained dwelling unit, because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.



# Cush v Renfrew House, 2022 AHRC 87

## ► Facts

- Susan Cush requested accommodation from Renfrew House for an indoor parking space, automated doors, and the construction of a ramp due to mobility issues.
- Her physical disability was present when she purchased the condo unit, but it worsened over time. Eventually, it her from using the outside parking lot of the condo and from going in through the front entrance, so she requested accommodation via an indoor parking space, a ramp, and automated doors.
- The Condo complied with the parking space but neglected to construct the ramp.
- Cush filed complaint against the Board for discrimination on the basis of physical disability, contrary to section 4 of the *Alberta Human Rights Act*.

## ► Decision

- The Alberta Human Rights Commission held that not taking measures to construct the ramp constituted a contravention of section 4 that was neither reasonable nor justifiable in the circumstances (under section 11 of the Act).



Award:

\$20,000 in general  
damages + interest

Ordered the CC to build  
the ramp

All Board members  
required to attend HR  
training

# REMEMBER! Reasonableness

- The decision in *Condominium Corporation No 072 8880 v Sully* (2021 ABQB 901), is a good reminder of both the importance to be mindful and reasonable when communicating with Owners, and the overarching ultimate discretion of the Courts.
- Plaintiff was in arrears of fees and PM sent two emails – however, they were sent to the Owner’s previous email address.
- When PM received no response, they did not use any of the other methods of communication to reach the Owner but rather moved forward with retaining a lawyer and filing a SOC to collect amounts owing.
- The process through the litigation was also fraught with issues of unreasonable behaviour.
- The Court held:
  - The [CC] was likely not required to spend the money it did, nor was it reasonable to do so in having its counsel draft and send a letter to the wrong address pursuing [the Owner], or any of the costs incurred to draft, issue or serve the Statement of Claim or take the further steps it did. **This claim could likely have been avoided entirely had the [CC] contacted [the Owner] at the correct email address or phone number**

# REMEMBER! Bylaw Violations

The steps required when there is a Bylaw violation are clearly laid out in the Regulation

Enforcement for Bylaw violations must be incremental

Step-by-step process to allow opportunity for Owner/Tenant to remedy

1. Check bylaws for “sanction” provisions - must follow process in bylaws
2. Warning letter - always start with warning letter (pursuant to Regulation)
3. Issue first fine Owner/Tenant - must pass board resolution to do this
4. Increasing fines - must be “reasonable”
5. Must have evidence to proceed to Court or enforce

# Key Take Aways

Most important –  
ACT REASONABLY!

Remember HR  
issues

CC has an obligation  
to commence timely  
repairs

Positive duty to  
enforce the Bylaws

Board must ensure  
incremental and  
reasonable steps are  
taken to enforce  
Bylaw violations

If litigation is  
appropriate, ensure  
that you engage in  
reasonable litigation  
conduct

Boards should listen  
to advice of experts,  
PMs and legal  
counsel



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