

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 14, 2023

CASE: 2022-00526N

Citation: Peel Condominium Corporation No. 312 v. Singh, 2023 ONCAT 131

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

Member: Laurie Sanford, Member

The Applicant,

Peel Condominium Corporation No. 312
Represented by Bharat Kapoor, Counsel

The Respondent,

Karamjeet Singh
Represented by Inderjit Dhiman, Counsel

The Intervenors,

Jennifer Doole
Barbara Clarkson
Self-Represented

Hearing: Written Online Hearing – January 6, 2023 to August 17, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Jennifer Doole and Barbara Clarkson are unit owners in Peel Condominium Corporation No. 312 (“PCC 312”) and they live in the unit directly below that of Karamjeet Singh. Ms. Doole acted as the representative and spokesperson for both co-owners. She complains of unreasonably loud noises and vibrations, which she reports as a “thumping” sound, from Mr. Singh’s unit. She attributes these sounds primarily to the activities of his children. She is particularly bothered by the intermittent noise of running and thumping after 10:30 pm, which wakes her up at night. PCC 312 brings this action to compel compliance of Mr. Singh with the governing documents of PCC 312 and with the *Condominium Act, 1998* (the “Act”).
- [2] Mr. Singh maintains that there is no unreasonable noise but rather the normal sounds of a young family in their daily activities. He takes the position that he is being discriminated against on the grounds of his family status. He feels he is

entitled to an accommodation under the *Human Rights Code*, R.S.O. 1990 c.H.19, which would include Ms. Doole tolerating what he describes as the sounds of his children's playful activities.

- [3] For the reasons set out below, I find that the activities within Mr. Singh's unit are creating an unreasonable noise and vibration that is a nuisance, annoyance or disruption and I will order that Mr. Singh bring himself and the other residents in his unit into compliance with the governing documents of PCC 312 and with the Act. Mr. Singh has not demonstrated, on a balance of probabilities, that he is being discriminated against on the basis of his family status. PCC 312 also requests costs, including pre-hearing costs of seeking to enforce compliance. PCC 312 is entitled to be reimbursed for the fees paid to the Tribunal and I will also award the amount of \$750 for the costs of attempting to enforce compliance. Apart from that, in all the circumstances of this case, including the delay in this proceeding caused primarily by PCC 312, no order as to costs will issue.
- [4] This hearing was conducted in writing using the Tribunal's online system. Additionally, there was a video conference held on August 10, 2023 for the purpose of cross-examining an acoustical engineer called by PCC 312. The parties entered evidence and made submissions. While I have reviewed all of these, in this decision I only refer to the material that relates directly to the decisions I was asked to make.

B. BACKGROUND

- [5] Mr. Singh testified that he bought his unit at the end of January, 2022. His family consists of his wife, who works from home, and two sons, aged 8 and 2. The 8-year-old comes home from elementary school at around 3:15 pm and the 2-year-old is home from day care at 5:30 pm. In mid-February 2022 Mr. Singh received a letter from PCC 312 informing him that a neighbour below him was complaining about noise from the children's activities. His testimony was that since being informed of the complaint, he and his wife have been restricting the children's activities. According to Mr. Singh, this involves having the elder boy sit in a corner with a phone or tablet. However, the younger son wants to play on returning home. Mr. Singh received a second letter from PCC 312 on April 14, 2022. His testimony was that PCC 312 "accused me of not making any efforts to address excessive noise, without investigating whether I had made any efforts." Mr. Singh's testimony was that in addition to restricting his children's activities, he also installed a padded area rug in the living room and an area rug and a mat in the two bedrooms. The rugs cover between 6% and 20% of the floor in the rooms where they are installed and there remain wide areas in each room that are uncarpeted. The flooring in the

unit is apparently hardwood.

- [6] Mr. Singh also reported other instances where the security guard notified him of complaints of noise coming from his unit. Sometimes, he testified, his family was not at home at the time of the complaint and at times there was drilling going on in some other unit. In May, 2022, Mr. Singh spoke by phone to the counsel for PCC 312 and explained his situation. However, his testimony was that the counsel for PCC 312 subsequently sent him a letter saying that he could be liable for legal costs of over \$35,000 if the noise continues. Mr. Singh testified to feeling stressed and harassed over these letters and complaints. He put his unit on the market but prices had dropped and it was not feasible to sell.
- [7] According to Mr. Singh, on October 19, 2022, PCC 312 conducted an inspection of his unit and the one directly below his. He testified that, despite PCC 312's promises to do so, PCC 312 did not share the results of this inspection with him. Mr. Singh concluded that the condominium manager, Sylvia Gdula, was "always on Ms. Doole's side" and was biased against the Singh family "from the beginning". His testimony is that his children go to bed by 10:00 pm and that the only occasions where there is noise after that time is when the younger boy is sick and crying in pain. Mr. Singh testified that the stress of this situation is affecting his wife's health to the point where she sought medical treatment.
- [8] Mr. Singh is also concerned that PCC 312 has served him with two notices of legal charges in this matter despite the fact that an application is before this Tribunal. He cites these letters as emotional abuse and possible human rights abuses. Mr. Singh is also of the view that Counsel for PCC 312 is mocking his wife's mental health by saying that he might wish to cross-examine Ms. Singh's doctor. Mr. Singh feels harassed and discriminated against on the basis of his family status.
- [9] Mr. Singh produced witness statements from two of his neighbours from the same floor. They each testified that the only time they heard the sounds of the children was when they were in the hall on their way home from school. They both testified that they enjoyed the sound of young children. They did not understand why anyone would complain about it.
- [10] Ms. Doole lives in the unit directly below Mr. Singh's and she lives with a co-owner. They are both over 70 years old and have health issues. Ms. Doole experienced what she describes as "unreasonable noise problems" from Mr. Singh's unit after the family moved in. She was advised by PCC 312 to keep a noise diary, which she did. She describes the noise she experiences as "thumping noises, loud sounds from items dropped on uncarpeted floors sporadically over all areas of our unit." Ms. Doole acknowledges that PCC 312 is no longer an adults-

only building but it is not clear when this transition occurred. She says she did not complain about single incidents of noise but only when the noise was “continuous and sporadic” over time. While she testified to experiencing unreasonable noises at other times and areas in her unit, her main concern is “unreasonable noise events over the bedrooms after 10:30 pm.” These noises wake her up. She, too, is experiencing stress as a result and is under a doctor’s care.

[11] In response to Mr. Singh’s statement that some noise complaints are made when he and his family are not at home or when drilling was going on in another unit, Ms. Doole made several submissions. She submitted that the usual procedure is for her to telephone the security guards who in turn telephone Mr. Singh’s unit and then call her back with the report of the conversation. Ordinarily, the security guards reported that Mr. Singh said he would deal with the noise. She is not aware of any time when she complained and the Singh family was not at home. She also submitted that she could recognise drilling noises and that none of her complaints were about those types of noise.

[12] Sylvia Gdula, the on-site condominium manager of PCC 312, also testified. She said that Ms. Doole complained to her in January, 2022 that she could hear “thumping sounds, banging noise and vibrations” from Mr. Singh’s unit. Ms. Gdula attached this complaint which refers to sounds of a “small child running around making thumping noises with each step. This starts at 4 pm and continues throughout the evening, sometimes even at 11 pm”. The complaint also refers to “numerous bumping sounds that sound as if something heavy is being dropped on the floor. . . . We also hear something that sounds like a larger toy which might have plastic wheels that they run across the bare floors.”

[13] Ms. Gdula also received a complaint from another resident, who lives beside Ms. Doole. This resident did not testify but Ms. Gdula produced an email written by this resident at the beginning of February, 2022. The resident noted that she had lived in PCC 312 for two years and had never had to call security for a noise complaint. Her email reads, in part:

The almost constant noise coming from [Mr. Singh’s unit] is unacceptable. I fully understand children may make a lot [of] noise and that noise from others is all part of living in a condo but this goes well beyond normal noise levels and goes on late into the night. Multiple times now I have been in bed past 10 pm and can hear a child running around, it is so loud I can hear it over my tv. Along with the running there is: banging on the walls, yelling, something rolling on the floor and drawers being open and closed over and over. If I can hear all of that in my own bedroom and I’m not even directly below them it just goes to show how loud it really is.

- [14] Ms. Gdula testified that she received a series of noise diaries from Ms. Doole for the period between February and the beginning of April, 2022, which document over 35 examples of sustained running, dropping items on the floor and rolling a hard-wheeled toy. The sounds often start in mid-morning on weekend and mid-afternoons on weekdays. The sounds continue sporadically until mid-to-late evening. On fourteen occasions, Ms. Doole reports sounds after 10:00 pm of running, thumping, dropping and tapping noises and, occasionally, running and screaming.
- [15] In October, 2022, Ms. Gdula testified, she conducted what she described as a “physical inspection” of both Mr. Singh’s unit and that of Ms. Doole. She said she “could confirm the transmission of noise and vibration” from Mr. Singh’s unit to Ms. Doole’s. Ms. Gdula speculated that that one of the causes of the transmission of noise is that Mr. Singh’s unit does not have flooring with sufficient soundproof padding. Ms. Doole testified that many of the sounds seemed to be sounds from a bare floor.
- [16] It appears that PCC 312 security visited Mr. Singh’s home or telephoned him on various occasions in response to complaints. Ms. Gdula testified that she sent Mr. Singh two warning letters about the noise, in February and April, 2022, before escalating the matter to PCC 312’s counsel. The first letter refers to the provisions in PCC 312’s declaration that prohibit the use of any unit in a way that will unreasonably interfere with the use and enjoyment by other unit owners of their units. The letter continues:

As much as we appreciate you have children living with you in your unit, the Corporation must enforce the Rules and Declaration for all residents without exception. We must insist that you comply with the noise regulations of our corporation and take the necessary steps to rectify it, which should include the additions of large area rugs/runners placed in the unit to eliminate some level of noise.

C. ISSUES & ANALYSIS

- [17] The issues in this application may be summarised as follows:
1. Does the Tribunal have the jurisdiction to hear disputes involving alleged violations of the Human Rights Code?
 2. Do the relevant provisions of the governing documents of PCC 312 discriminate against persons on the basis of family status?
 - i. Has Mr. Singh experienced discrimination on the basis of his family

status?

- ii. Is Mr. Singh entitled to an accommodation for the noise he and his family make? If so, what form should the accommodation take?
3. Has Ms. Doole experienced unreasonable noise and vibration that is a nuisance, annoyance or disruption caused by the activities of Mr. Singh or members of his household?
4. Is Mr. Singh in violation of the Act or the governing documents of PCC 312?
5. Has PCC 312 fulfilled its obligations to take reasonable steps to enforce compliance with the Act and with its governing documents?
6. What remedy should the Tribunal order?
7. Should there be an award of costs?

Issue 1 – Does the Tribunal have the jurisdiction to hear disputes involving alleged violations of the Human Rights Code?

[18] The Supreme Court of Canada in *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC14, [2006] 1 SCR 513 ruled that tribunals like this one have the jurisdiction to consider how the provisions of the Human Rights Code might apply, but only in the context of a matter that is otherwise properly before the tribunal. If the Tribunal lacks the jurisdiction to deal with a dispute under the Act or any of its regulations, it cannot claim jurisdiction solely on the basis of a dispute relating to the provisions of the Human Rights Code.

[19] The Tribunal has the jurisdiction to hear this matter. The dispute concerns whether Mr. Singh and his family are making unreasonable noise or vibration that is a nuisance, annoyance or disruption. Subparagraph 117(2)(a) of the Act prohibits people from carrying on activities which create an unreasonable noise which is a “nuisance, annoyance or disruption” to an individual in another unit. Subparagraph 117(2)(b) refers to a prohibition of “any other prescribed nuisance, annoyance or disruption”. Clause 5 of section 26 of Regulation 48/01 to the Act prohibits vibration that is unreasonable and a nuisance, annoyance or disruption. Subparagraph 1(1)(c.1) of Regulation 179/17 gives the Tribunal the jurisdiction to hear disputes with respect to subparagraphs 117(2)(a) and (b) and, by extension, clause 5 of section 26 of Regulation 48/01.

[20] PCC 312 also has provisions in its declaration and its rules that address the creation of noise or nuisance. Section 13 (a) of the Declaration contains a

prohibition against the use of a unit “in such a manner as is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other unit owners”. Rules 9 and 14 of PCC 312 deal with noise and state:

9. Owners and their families, guests, visitors, servants and agents shall not create or permit the creation 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 units or common elements by other owners

14. No noise, caused by any instrument or other device or otherwise, which in the opinion of the board may be calculated to disturb the comfort of other owners, shall be permitted.

Subparagraphs 1(1)(d)(iii.1) and (iii.2) of Regulation 179/17 give the Tribunal the jurisdiction to hear disputes relating to these provisions in PCC 312’s rules.

[21] I conclude that the Tribunal has the jurisdiction to hear this matter and to determine whether and how the provisions of the Human Rights Code might apply.

Issue 2 – Do the relevant portions of the governing documents of PCC 312 discriminate against persons on the basis of family status? Has Mr. Singh experienced discrimination on the basis of his family status? If so, is Mr. Singh entitled to an accommodation and what form should that accommodation take?

[22] The first issue here was initially expressed as “Is the Condominium Corporation and its Rules and Declaration in accordance/compliance with the Human Rights Code?” This is too broad a question to be answered within the context of this case and the jurisdiction of the Tribunal. The relevant question is whether or not the sections of the Declaration and Rules of PCC 312 cited above discriminate against persons on the basis of family status.

[23] Mr. Singh in his closing submissions referred to various policy statements issued by the Human Rights Tribunal of Ontario, including “Policy and guidelines on discrimination because of family status” (“Family Status Policy”). While the Family Status Policy notes that it is not binding on courts and tribunals, it is an extremely helpful guide to interpreting the current position of the Ontario Human Rights Commission on discrimination because of family status. In section V.1 of the Family Status Policy, it notes, “The *Code* provides that every person has the right to be treated equally without discrimination because of family status.” The policy notes that not every distinction may be considered discriminatory but continues, “Discrimination because of family status includes any distinction, including exclusion, restriction or preference based on family status, that results in the

impairment of the recognition of human rights and fundamental freedoms.”

[24] Mr. Singh also referred to the Ontario Human Rights Commission “Housing and family status (fact sheet)”. This fact sheet provides:

The Ontario *Human Rights Code* prohibits housing providers from discriminating against families with children. This applies to renting, being evicted, building rules and regulations and use of services and facilities. . . .

Families with young children may also face harassment and eviction because of the normal noise associated with children. It is natural that children run, play, and cry, and while parents [are] obligated to take steps in accordance with good parenting practices to manage the noise made by their children and to be good neighbours, it should be recognised that children naturally make some noise, and such noise should not be cause for harassment or loss of housing. Landlords should take steps to ensure that families with children are not harassed by neighbours because of the normal noise associated with children, just as they would with regard to harassment based on other *Code* grounds.

[25] In Section VI of the Family Status Policy, the policy notes, “The duty to accommodate will only arise where a *prima facie* case of discrimination on the basis of family status has been demonstrated”. . .

[26] Mr. Singh alleges that he is also being harassed based on his family status. The Family Status Policy states, at section 2.3, “Section 2(2) of the *Code* provides that every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of among other grounds, family status.”

[27] The provisions of subsection 13(a) of PCC 312’s declaration and Rules 9 and 14 of PCC 312’s Rules are not inherently discriminatory. They contain prohibitions and rules of general application. However, they do rely on the discretion of PCC 312’s management or board or both. The declaration requires noise to be “unreasonable”, presumably in the opinion of management or the board. Both Rules 9 and 14 expressly incorporate the opinion of the board or, in the case of Rule 9, the management, as the determining factor in whether the rule has been violated. So, while the provisions themselves may not be discriminatory, the question remains as to whether they have been applied by PCC 312 in such a way as to discriminate against Mr. Singh.

[28] Considering first the way the noise complaints were handled, PCC 312 appears to follow a usual practice of either sending a security guard to the premises or telephoning the unit and asking that the volume of the sound be lowered. If there

are repeated complaints, then the management of the condominium corporation will generally write several warning letters, with a final warning that if there is no improvement, the matter will be turned over to the lawyers to pursue and the unit owner whose conduct is being complained of may have to pay the legal expenses associated with the lawyer's involvement. This is what PCC 312 did in this case. It is true that Ms. Gdula began her second letter by assuming that Mr. Singh had done nothing to address the issue without apparently asking what had been done. However, Ms. Gdula was correct in that, regardless of the actions taken by Mr. Singh, the complaints continued.

[29] Mr. Singh alleges, without evidence, that Ms. Gdula is biased against him and favours Ms. Doole. Ms. Gdula did not rely solely on complaints from Ms. Doole. She also had a written complaint from another unit owner. As well, she went to both Mr. Singh's unit and that of Ms. Doole and heard the noise for herself. It appears that Ms. Gdula did have a reasonable basis for forming the opinion that the noise from Mr. Singh's unit was violating PCC 312's Rules.

[30] I conclude that Mr. Singh has not established that he is being discriminated against based on his family status. The governing documents of PCC 312 are not on their face discriminatory nor are they being applied in an arbitrary or discriminatory way. I am not persuaded, on the evidence before me, that Mr. Singh is being harassed by the enforcement measures taken by PCC 312. As will be discussed below, it does appear that PCC 312 engaged in inappropriate conduct by issuing Mr. Singh with legal bills for this hearing during the hearing itself. That conduct will be considered in the assessment of costs. Mr. Singh is not entitled to an accommodation for the noise that his family is creating.

Issue 3 & 4 – Has Ms. Doole experienced unreasonable noise and vibration that is a nuisance, annoyance or disruption caused by the activities of Mr. Singh or members of his household? Is Mr. Singh in violation of the Act or the governing documents of PCC 312?

[31] Subsection 117(2)(a) of the Act refers to "unreasonable" noise. Noise is by itself a subjectively experienced thing. What is an "unreasonable" noise is also contextual. What is a reasonable noise at 10:00 am on a weekday morning becomes less reasonable in the mid-evening when people wish to relax and may be unreasonable at 10:00 at night. Sounds experienced on the weekend may be considered to be reasonable when the same volume of sound might be considered unreasonable during the week if people are trying to work. Families with young children may be expected to create more noise than families with adult children or families without children.

[32] An accommodation for the noise of children is a statutory requirement under the Human Rights Code. An allowance for the noise of children, on the other hand, is a matter of common sense and consideration. It appears that both Ms. Doole and the other complainant did make some allowance for the presence of the children in Mr. Singh's family. Ms. Doole testified that she did not complain about isolated noise and was particularly concerned about the noise late at night. The other complainant specifically acknowledged that children could be expected to be noisier than adults. Their complaints were that the noise was unreasonable and continued too far into the night, regardless of the presence of children. Mr. Singh testified that his children went to bed at 10:00 pm and that the only time there was sound from them after that time was when his 2-year-old was sick and crying in pain. However, neither Ms. Doole nor the other complainant complained of crying sounds. The sounds they heard after 10:00 pm were of children running, dragging toys, opening and closing drawers and, occasionally, yelling. They also heard adults raising their voices.

[33] Mr. Singh accuses Ms. Doole, without evidence, of being unduly sensitive to noise and of expecting "pin-drop" silence. However, it is not only Ms. Doole who has heard the noise and considers it unreasonable. We have the statement of the other complainant and the evidence of Ms. Gdula. Mr. Singh also submits that Ms. Doole's co-owner has not joined in the complaint. However, Ms. Doole explained that she is representing both herself and her co-owner in this matter. As between the two accounts, I prefer the testimony of Ms. Doole. Her testimony was consistent and corroborated by the written statement of the other complainant and by the testimony of Ms. Gdula.

[34] The fact that neighbours of Mr. Singh who live on the same floor as he does are not complaining of the noise is not an effective rebuttal of Ms. Doole's evidence. The Tribunal frequently deals with cases where sound is transmitted between floors more noticeably than between units on the same floor.

[35] When does a noise become both unreasonable and a nuisance, annoyance or disruption? This issue was considered in the Tribunal case of *Carleton Condominium Corporation No. 132 v Evans*, 2022 ONCAT 97. In that case, the Tribunal found that, given that:

. . . there is no definition of nuisance in its declaration and rules, 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.

[36] In the present case, Ms. Doole and her co-owner have had their sleep disrupted by the noise and vibration from Mr. Singh's unit on 14 occasions over a three-month period. During the day, there is frequent noise which Ms. Doole reports as excessive and sustained. These are not trivial interferences. I find that the noise from Mr. Singh's unit is unreasonable and constitutes a nuisance under subparagraph 117(2)(a), a vibration nuisance under subparagraph 117(2)(b) of the Act and section 26 of Regulation 48/01 and a violation of section 13(a) of the PCC 312 Declaration and its Rules 9 and 14.

Issue 5 – Has PCC 312 fulfilled its obligations to take reasonable steps to enforce compliance with the Act and with its governing documents?

[37] Under subsection 17(3) of the Act, PCC 312 has a duty to take all reasonable steps to ensure that the owners of units "comply with this Act, the declaration, the by-laws and the rules". As discussed above, Ms. Gdula followed a reasonable process, including a site visit, for informing herself of the issue and for warning Mr. Singh of infractions of PCC 312's governing documents. She also acted reasonably in escalating the matter to PCC 312's outside counsel. I find that PCC 312 fulfilled its obligations under subsection 17(3).

Issue 6 – What remedy should the Tribunal order?

[38] Generally, in circumstances like this, the Tribunal orders the Respondent to bring himself into compliance with the Act and the condominium corporation's governing documents. In this case, the question is how Mr. Singh is to do this. I accept his testimony that he has tried, by restricting the activities of his elder son and by putting down some carpets, to minimize the noise, even at some cost to his son's ability to play. These efforts have not worked.

[39] Both Ms. Doole and Ms. Gdula suggested that the sounds appeared to be coming from bare floors and that rugs might help. Mr. Singh testified that he had installed a "padded rug" in his living room. He also produced drawings and measurements showing rugs in three of the rooms in his unit. There appear to be two problems with Mr. Singh's solution of installing carpets. First, the carpets are too small. The mat in what appears to be the boys' bedroom is only 4 feet by 2.5 feet to cover an area of 16.5 feet by 9.5 feet. It covers only 6% of the floor space. Similarly, the carpet in the master bedroom covers only 20% of the floor space and the living room rug covers 18%. There is no evidence of any floor coverings in any halls of the unit. Second, there is no evidence that any of the rugs have a noise retarding underlay.

[40] There is no evidence before me as to what the optimum floor coverage is for a

sound retarding rug and underlay to be effective. Mr. Singh will have to consult a flooring or acoustical expert to determine what the best floor coverage ratio is for the rugs in his unit. Based on the evidence, the current sized rugs are not effective. Looking at the drawings of the rooms, there is too much bare floor space, including one section of bare floor in the master bedroom that is 16 feet by 4 feet and another in the living room that is 23 feet by 2 to 5 feet.

- [41] PCC 312 provided evidence from an acoustical engineer who performed a sound test between Mr. Singh and Ms. Doole's unit. The test itself was of little use in deciding the issues in this case. What the acoustical engineer tested for was whether the structure of the building complied with the recommendations of the Ontario Building Code for noise transference, which was not an issue in this hearing. However, the acoustical engineer did say, in response to questions during his cross-examination, that carpets or rugs could be outfitted with noise retarding underlay which would be expected to reduce sound transference between floors. He suggested a rating of 20 decibels would be a good place to start as it could be expected to half the volume of noise in many circumstances.
- [42] To bring himself into compliance with the Act and PCC 312's governing documents, Mr. Singh should consult either a flooring expert or an acoustical expert or, preferably, both to select and install carpets or area rugs and runners of the optimum size in the rooms and any hallways of his unit. He will need to install under these rugs a sound reducing underlay rated to at least 20 decibels.
- [43] Having the correctly sized rugs and runners in place with the optimum sound reducing underlay should work to reduce the daytime sound of the children playing to a reasonable level. However, there remains the issue of the noise that occurs at night. Ms. Doole is entitled to nighttime quiet between the hours of 10:00 pm and 8:00 am. I choose these hours, in part because they represent a reasonable range of sleep times, and because there does not appear to be a problem with noise early in the morning. Mr. Singh must take more effective actions to restrict his children's activities and noise in those hours. As the Family Status Policy states, "parents [are] obligated to take steps in accordance with good parenting practices to manage the noise made by their children and to be good neighbours".

Issue 7 – Should there be an award of costs?

- [44] PCC 312 submits that it has incurred "approximately \$7,500 in legal fees, inclusive of HST, in addressing this matter since the beginning of the matter." Additionally PCC 312 incurred the cost of the Tribunal filing fees. PCC 312 provided no detail of the expenses incurred or supporting documentation for them. The Tribunal ordinarily considers costs in three separate categories: the pre-application costs of

attempting to ensure compliance with the Act of the condominium corporation's governing documents; the filing fees incurred by the successful party; and any legal costs of the proceeding itself. Compliance costs are awarded under Subsection 1.44 (1) of the Act. Costs of the proceeding are awarded under Rule 48 of the Condominium Authority Tribunal Rules of Practice, Effective January 1, 2022 (the "CAT Rules"). Rule 48.1 provides that a successful party is entitled to a reimbursement of the Tribunal fees unless the Tribunal orders otherwise. In this case, the fees are \$200 and I will order Mr. Singh to pay them to PCC 312.

[45] PCC 312 incurred an unspecified legal cost of a telephone call to Mr. Singh by PCC 312's counsel and an email from counsel advising of the continuing noise and the possible consequences of continued non-compliance. I note that Mr. Singh regarded the email as objectionable. However, I find that the contents and tone are consistent with the general practice for letters of this type. It is appropriate that Mr. Singh pay a reasonable amount for the legal fees associated with the telephone call and the email and I will award an amount of \$500 for the reimbursement of these costs.

[46] Considering the reimbursement of legal costs of the proceeding, Rule 48.2 of the CAT Rules reads:

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.

[47] In determining whether an exception should be made in this case to the general rule that legal fees are not awarded, I note that twice during the course of this application, PCC 312 served Mr. Singh with a demand for the legal expenses it had incurred in the hearing to that point. This was completely inappropriate and, in a result which might have been foreseen, was taken by Mr. Singh as an attempt to harass and intimidate him. I also note that the hearing in this matter lasted longer than normal and that the delay was primarily the result of delays on the part of PCC 312. Each party's conduct may be considered in determining whether legal costs should be awarded. In all the circumstances of this case, I conclude that no order for the legal costs of the proceeding will issue.

D. ORDER

[48] The Tribunal Orders that:

1. Mr. Singh will, within 60 days of the date of this Order, bring himself and his family members into compliance with subsection 117(2) of the Act and with PCC 312's governing documents which relate to noise and nuisance. Mr. Singh will do this by:
 - a. Installing appropriately sized carpets or rugs in the living areas of his unit, including any hallways;
 - b. Installing sound reducing underlay with a minimum rating of 20 decibels; and
 - c. Restricting his children's play activities from 10:00 pm to 8:00 am each day.

2. Mr. Singh will, within 30 days of the date of this Order pay the amount of \$700, consisting of:
 - a. \$500 for PCC 312's pre-hearing legal costs of attempting to enforce compliance; and
 - b. \$200 for the reimbursement of PCC 312's filing fees with the Tribunal.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: September 14, 2023