

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 6, 2024

**CASE:** 2023-00191N

**Citation:** Stoyanov v. York Condominium Corporation No. 141 et al., 2024 ONCAT 32

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

**Member:** Jennifer Webster, Member

**The Applicant,**

Youriy Stoyanov  
Self-Represented

**The Respondents,**

York Condominium Corporation No. 141  
Represented by Inderpreet Suri, Counsel

Zena A. KH Al-Hamdan  
Self-Represented

**Hearing:** Written Online Hearing – July 17, 2023 to February 26, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

[1] The Applicant, Youriy Stoyanov, is the owner of a unit of York Condominium Corporation No. 141 (“YCC 141”). His mother, Boyka Gurova, is the sole occupant of his unit. He alleges that cigarette smoke and odour are migrating to his unit from the neighbouring unit owned by Zena A. KH Al-Hamdan and that the smoke and odour are causing a nuisance to his mother. He further argues that YCC 141 has failed to respond to his mother’s complaints and that it has permitted Ms. Al-Hamdan to carry on an activity in her unit that causes a nuisance.

[2] The Applicant seeks the following relief from the Tribunal to address the alleged nuisance of cigarette smoke and odour:

- An order directing Ms. Al-Hamdan to cease smoking in her unit;
- An order requiring Ms. Al-Hamdan to install an air quality monitoring system in her unit that will continuously log data to confirm that she is not smoking in

her unit and an order that Ms. Al-Hamdan provide the data from the air quality monitoring system to the Applicant and Ms. Gurova;

- An order directing YCC 141 to replace the ventilation system throughout the condominium building;
- An order directing YCC 141 to retain an engineering firm to investigate the circulation of smoke throughout the condominium building and requiring YCC 141 to follow through with any mitigation measures recommended by the engineering firm; and
- \$25,000 in damages to compensate him and Ms. Gurova.

[3] YCC 141 asks that the Applicant's case be dismissed with costs. It argues that the Applicant has failed to establish that smoke and odour is migrating into his unit. YCC 141 further states that it has investigated every complaint made by Ms. Gurova about smoke odour and, on every occasion, it has been unable to confirm that there is smoke or odour in the unit. In addition, YCC 141 notes that it has no rules prohibiting smoking in the units and that, although Ms. Al-Hamdan voluntarily ceased smoking in her unit in January 2022, she is permitted to do so. YCC 141 asks the Tribunal to find that the Applicant and Ms. Gurova have engaged in conduct towards Ms. Al-Hamdan that amounts to a nuisance, annoyance or disruption, and it seeks an order prohibiting them from this conduct as well as an order prohibiting them from communicating with Ms. Al-Hamdan. It also asks for its costs related to this application.

[4] Ms. Al-Hamdan disputes the Applicant's claim that she is causing smoke and odour to migrate into his unit. She says that she stopped smoking in her unit in January 2022 after she received a letter from the condominium manager about Ms. Gurova's complaint. Ms. Al-Hamdan states that she leaves her unit almost eight times a day in order to smoke outside rather than in her unit because of the complaints made Ms. Gurova. She describes that she feels harassed by Ms. Gurova's conduct towards her and she asks the Tribunal to order Ms. Gurova to stop harassing her.

[5] This application moved from Stage 2—Mediation to Stage 3—Tribunal Decision on July 17, 2023. At the outset of Stage 3, the parties agreed to engage in mediation-adjudication, pursuant to Rule 44 of the Tribunal's Rules of Practice. The parties were unable to resolve these issues despite their sincere efforts in mediation, and the hearing process started on October 17, 2023.

[6] I find that the evidence does not establish that Ms. Gurova is experiencing smoke

or odours in her unit. I also conclude that YCC 141 has fulfilled its obligations to enforce the *Condominium Act, 1998* (the “Act”) in its response to Ms. Gurova’s complaints of smoke and odour. Therefore, I dismiss the application without costs to any party. I also decline to make any orders against the Applicant and Ms. Gurova with respect to their conduct towards Ms. Al-Hamdan. These are the reasons for my decision.

## **B. ISSUES & ANALYSIS**

[7] The issues to be addressed in this case may be summarized as follows:

1. Is Ms. Al-Hamdan engaging in an activity by smoking in her unit that is causing a nuisance, annoyance or disruption to Ms. Gurova?
2. Has YCC 141 fulfilled its obligations under the Act in its response to the concerns expressed by Ms. Gurova and the Applicant about nuisance smoke and odours?
3. What order should the Tribunal make?

### **Issue No. 1: Is Ms. Al-Hamdan engaging in an activity by smoking in her unit that is causing a nuisance, annoyance or disruption to Ms. Gurova?**

[8] The Applicant argues that Ms. Al-Hamdan engages in chain-smoking in her unit and that she also permits her guests to smoke. He states that, because of the smoking in her unit, smoke and odour migrate to his unit, causing a nuisance to his mother through second-hand and third-hand smoke. He describes third-hand smoke as the residue of nicotine and other pollutants left on surfaces in his unit. Ms. Al-Hamdan says that she has not smoked in her unit since mid-January 2022, and YCC 141 states that it has been unable to confirm the migration of smoke and odour into the Applicant’s unit.

[9] Section 117(2) of the Act states that no activity is permitted that creates a nuisance, annoyance or disruption. It reads:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, or the corporation; or

(b) any other prescribed nuisance, annoyance or disruption to an individual in

a unit, the common elements or the assets, if any, of the corporation.

[10] Section 26 of Ontario Regulation 48/01 (O.Reg. 48/01) defines the “other prescribed” nuisances as: odour, smoke, vapour, light and vibration.

[11] Although the word “nuisance” is not defined in the Act or O.Reg. 48/01, it has a particular meaning in the context of a legal claim of nuisance. The Tribunal described the legal concept of nuisance in its decision in *Carleton Condominium Corporation No. 132 v. Evans*, 2022 ONCAT 97, at paragraph 20 as follows:

...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.

Therefore, in order for smoke and odour to rise to the level of nuisance, the interference must be substantial and unreasonable, not minor or occasional interference.

### **The Evidence about Ms. Al-Hamdan’s smoking**

[12] Ms. Gurova has lived in the Applicant’s unit since 2008. Ms. Al-Hamdan moved into the neighbouring unit in 2015. She is a smoker, and one of the reasons that she chose to purchase a unit in YCC 141 was because there were no rules prohibiting smoking in the units.

[13] Ms. Gurova first complained about smoke migrating from Ms. Al-Hamdan’s unit in January 2022 in a conversation with the condominium manager, Marina Proi. The condominium corporation sent a letter to Ms. Al-Hamdan about the complaint on January 10, 2022. Ms. Al-Hamdan states that she stopped smoking in her unit altogether after she received the letter from the condominium corporation. The Applicant and Ms. Gurova challenge Ms. Al-Hamdan’s statement that she has not smoked in her unit since January 2022, and they say that she continues to smoke daily in her unit.

[14] The Applicant and Ms. Gurova have no evidence that Ms. Al-Hamdan continued to smoke in her unit after January 2022 or that she permits her guest to smoke, except for their belief that this is happening.

[15] I am persuaded that Ms. Al-Hamdan has stopped smoking in her unit for the following reasons:

- She advised the condominium manager in January 2022 that she would no longer smoke in the unit;
- The condominium manager confirmed Ms. Al-Hamdan's statement in her testimony in this matter and in a follow-up letter to Ms. Al-Hamdan in April 2022; and
- The condominium manager and YCC 141's security guards have regularly observed Ms. Al-Hamdan leaving the building to smoke outside. YCC 141's security camera has recorded footage showing Ms. Al-Hamdan exiting and entering the building to smoke.

In addition, YCC 141's security guards have investigated Ms. Gurova's smoke complaints by, among other steps, entering Ms. Al-Hamdan's unit. The security guards have completed incident reports in relation to their investigations, and they report that they have never smelled cigarette smoke or related odours. The most recent investigation of a smoke complaint from Ms. Gurova occurred on January 27, 2024, at approximately 10:45 pm. During this investigation, the security guard used his body camera to record his investigation and his interactions with Ms. Gurova and Ms. Al-Hamdan. YCC 141 submitted the recording from the body camera into evidence. From my review of the portion of the recording in Ms. Al-Hamdan's unit, there is no evidence of smoking, cigarettes, ashtrays, or other smoking related items.

[16] Moreover, Ms. Al-Hamdan testified that she would not smoke in her unit because she had a new job with a condition that she work from home but not expose any of her employer's office equipment to smoke. She also stated that she had adopted a kitten in March 2023, and she would not smoke in her unit because this would affect the kitten. I find Ms. Al-Hamdan's statements that she stopped smoking in her unit credible and consistent with the observations of YCC 141's staff. I accept that Ms. Al-Hamdan has not smoked in her unit since mid-January 2022.

### **The Evidence about Smoke and Odour in the Applicant's Unit**

[17] Even if I found that Ms. Al-Hamdan continued to smoke or permit smoking in her unit, it is clear that she is allowed to do so because YCC 141 does not have rules that prohibit smoking in the units. She may smoke in her unit, provided that it does not create a nuisance, annoyance or disruption within the meaning of section 117(2) of the Act.

[18] Ms. Gurova started complaining to YCC 141 about smoke and odour in her unit in January 2022. She next complained on April 8, 2022, and then wrote to Ms. Proi

on April 23, 2022, to detail her complaints and ask that the YCC 141 board enact a rule to prohibit smoking in all indoor areas. YCC 141 received no further smoking complaints from Ms. Gurova until June 25, 2023, after the Applicant had started this case with the Tribunal.

- [19] YCC 141's security guard responded to complaints from Ms. Gurova on June 25, 2023, at 5:10 am and 8:40 pm, and, on both occasions, the guard did not detect smoke or other odours. On August 17, 2023, shortly after midnight, Ms. Gurova complained to YCC 141's security about smoke in her unit. The security guard investigated and wrote in this incident report that he did not smell smoke and did not find evidence of smoke odours in the adjacent staircase or hallways.
- [20] On October 30, 2023, YCC 141 sent a letter to Ms. Al-Hamdan confirming that there was a notice of entry agreement between YCC 141 and Ms. Al-Hamdan. The agreement provided YCC 141 with the right to use its master key for the purpose of investigating any complaints of smoke or odours if she was absent at the time of the investigation.
- [21] On November 2, 2023, YCC 141 directed Ms. Gurova to report smoke odours to the security guards or the condominium manager at the time she was experiencing them, and it committed to respond immediately to investigate her complaints.
- [22] YCC 141's security guard investigated complaints from Ms. Gurova on November 26, 2023, at 2:21 am and November 27, 2023, at 4:15 am. As part of the investigation of each of these complaints, the security guard entered both units. The security guard reported in his incident reports related to these complaints that he found no smoke odour or signs of smoking in either unit.
- [23] The next investigation occurred on January 27, 2024, around 10:45 pm. As noted above, YCC 141 provided the security guard's video recording of his investigation. It also provided the security guard's incident report, in which he described his investigation, reporting that he did not detect any smell or unusual odours in Ms. Gurova's unit. In addition, he reported that he did not find any signs of smoking or other odours in Ms. Al-Hamdan's unit.
- [24] The Applicant has the burden to prove on a balance of probabilities that smoke and odour are entering his unit and that the smoke and odour are creating a nuisance. The challenge with the evidence in this case is that the only evidence of smoke and odour are Ms. Gurova's complaints to YCC 141 and her statements that there is smoke and odour. Ms. Gurova testified that she smelled tobacco odours in her unit every day and that there is nicotine residue on every surface in her unit. She identified Ms. Al-Hamdan's unit as the source of the smoke and

odours based on her assertion that Ms. Al-Hamdan and her guests were smoking in her unit. She argues that the smoke and odour has created a nuisance to her that affects her health and her enjoyment of her unit.

[25] YCC 141's security guards have been unable to confirm Ms. Gurova's complaints of smoke and odours in her unit in their investigations. The Applicant challenges the security guards' ability to investigate smoke and odour, arguing that they have no particular training to smell smoke. However, it is reasonable to expect that security guards are able to identify whether there are smoke and odours present when they are in each of the units. It should require no particular skill to detect smoke and odour, and the security guards were unable to detect smoke and odour on each occasion they investigated a complaint.

[26] The Applicant states that other residents of the same floor also experienced smoke and odour and that they complained to the condominium manager. Ms. Proi testified that she had received no complaint from any resident except the complaints from Ms. Gurova. The Applicant did not provide witness statements from other residents about smoke and odour. He explained that he did not provide other witness statements because the resident who had a similar concern about smoke had died. In the absence of testimony or direct evidence of smoking complaints from other residents, I am not persuaded that other residents can confirm that there is smoke and odour in Ms. Gurova's unit.

[27] As evidence to support Ms. Gurova's description of smoke and odour, the Applicant submitted readings from an air quality monitor that he installed in October 2023. Ms. Gurova wrote in her witness statement that the monitor provided an accurate and reliable measure of second-hand tobacco smoke coming into her unit. In particular, she identified that the monitor told her exactly when a cigarette was lit up in Ms. Al-Hamdan's unit.

[28] Ms. Gurova provided documents about the air quality monitor as attachments to her witness statement. Based on a review of these documents, I understand that the air quality monitor indicates that air quality is either good, moderate or poor and that it measures volatile organic compounds (VOCs) in the air. The Frequently Asked Questions section of the monitor's manual includes the following question and answer about VOCs:

What are Volatile Organic Compounds (VOCs) and what do they entail?

Volatile Organic Compounds (VOCs) are a variety of chemicals that easily evaporate into the air at room temperature. The total VOCs are reported as a relative change in intensity on a scale from 1 to 100. VOCs evaporate into the

air we breathe from a wide array of sources. Common sources of VOCs in the home can range from the aroma of citrus fruits or scented candles to paints, cleaning supplies, pesticides, building materials and furnishings, office equipment such as printers, craft materials like glues and markers and a variety of cosmetic products.

There is no reference to tobacco smoke or related odours in the list of VOCs in the manual of Ms. Gurova's air quality monitor. Although VOCs may include compounds associated with cigarette smoke, it is clear that VOCs also include chemicals related to a range of other sources.

- [29] I accept that the air quality monitor reports show a change in the intensity of VOCs. However, the monitor does not provide any information about the nature of the VOCs, specifically whether the VOCs detected are associated with cigarette smoke, and, therefore, the reports do not prove that there is smoke and odour in Ms. Gurova's unit. I do not accept Ms. Gurova's statement that the air quality monitor is a reliable measure of second-hand smoke or that it identifies when Ms. Al-Hamdan lights up a cigarette in her unit. From a review of the documents about the air quality monitor, I find that it is not capable of identifying second-hand smoke or detecting the source or nature of the VOCs. Moreover, it is simply not plausible that the air quality monitor can detect when a cigarette is lit in another unit because it is designed to monitor air quality and not the causes of changes in air quality.
- [30] The Applicant has not proven that there is smoke and odour in his unit because the evidence of smoke and odour is limited to the statements and beliefs of Ms. Gurova that this is happening. Her statements are not confirmed by the investigations by YCC 141's security guards, the air quality monitor readings, or testimony of other witnesses. Put simply, there is no evidence to confirm Ms. Gurova's statements about the migration of smoke and odour into the unit, and I cannot find that there is smoke and odour based solely on her complaints and beliefs, particularly given the contemporaneous investigations by YCC 141's security guards who failed to detect any smoke or odour.
- [31] Even if I were to accept that smoke and odour were migrating into the Applicant's unit, which I have not found on the evidence, I could not make a conclusion about the source of the smoke and odour; nor could I find, on the evidence before me, that the smoke and odour constitute a nuisance.
- [32] I find that the evidence does not prove that there is a smoke or odour nuisance affecting Ms. Gurova.



**Issue No. 2: Has YCC 141 fulfilled its obligations under the Act in its response to the concerns expressed by Ms. Gurova and the Applicant about nuisance smoke and odours?**

[33] The Applicant argues that YCC 141 has not met its obligations under the Act, as set out in sections 17 (3), 58 (1) and 119 (1) of the Act. These sections state:

17(3) The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

58(1) The board may make, amend or repeal rules under this section respecting the use of the units, the common elements or the assets, if any of the corporation to,

(a) promote the safety, security or welfare of the owners and of the property and the assets, if any, of the corporation; or

(b) prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation.

119(1) A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

[34] It is the Applicant's position that YCC 141 has failed to take all reasonable steps to ensure that Ms. Al-Hamdan does not cause a smoke and odour nuisance to Ms. Gurova. He submits that YCC 141 has not fully investigated Ms. Gurova's complaints and that it had a duty to retain an independent engineering firm to investigate. In addition, he argues that YCC 141 was required to prohibit Ms. Al-Hamdan from smoking in her unit pursuant to its statutory duty to comply with the Act and to ensure that owners comply with the Act.

[35] YCC 141 argues that it met its obligations. It states that it investigated Ms. Gurova's complaints, and, in each investigation, it found no evidence supporting her allegations that Ms. Al-Hamdan continued to smoke in her unit or that smoke and odours were present in her unit.

[36] From the evidence before me, it is clear that YCC 141 investigated Ms. Gurova's complaints of smoke and odour and that it was unable to confirm the presence of smoke and odour. YCC 141's security guards entered Ms. Gurova's unit as well as

Ms. Al-Hamdan's unit to determine whether there was cigarette smoke and related odours. In each instance, the security guard found nothing to confirm Mr. Gurova's complaints. I accept that YCC 141 engaged in reasonable steps to respond to Ms. Gurova's complaints. Further steps such as retaining an engineering firm were not required because YCC 141 was not able to detect any smoke or odour in the Applicant's unit.

- [37] I also note that YCC 141 took the steps of painting and cleaning the common areas of the hallway on the Applicant's floor and that it has offered to clean the Applicant's unit and Ms. Al-Hamdan's unit at its own cost in an effort to remove any lingering smoke odour. Although Ms. Al-Hamdan has accepted YCC 141's offer, the Applicant has not agreed to have his unit cleaned by YCC 141 because he states that the proposed cleaning would be insufficient, and he would prefer to hire his own cleaning service. I find that, in taking these additional steps to address the concerns, YCC 141 was acting above and beyond its duties under the Act.
- [38] I appreciate that the Applicant and Ms. Gurova want YCC 141 to take further steps. The Applicant relies on the Tribunal's decision in *Zachepylenko v. Toronto Standard Condominium Corporation No. 2680 et al.*, 2023 ONCAT 42, as evidence of the steps that are required of a condominium corporation when responding to complaints of smoke migration. In that case, the condominium corporation hired two engineers to investigate the smoke migration and undertook some work in the units to remedy air sealing deficiencies. However, the condominium corporation did not dispute that there was smoke migration and had detected smoke odour in its own investigation. These are not the circumstances in this case because YCC 141 has been unable to confirm smoke migration in any of its investigations, and it challenges Ms. Gurova's claims that there is smoke and odour in her unit.

### **Issue No. 3: What orders should the Tribunal make?**

- [39] Having found that, based on the evidence before me, there is no nuisance, annoyance or disruption as defined as per section 117 (2) of the Act, and that YCC 141 has taken reasonable steps in response to Ms. Gurova's complaint, I order none of the remedies sought by the Applicant.
- [40] The condominium corporation and Ms. Al-Hamdan requested that the Tribunal issue orders against the Applicant and Ms. Gurova related to her behaviour towards Ms. Al-Hamdan.
- [41] Firstly, they ask that I find that Ms. Gurova is causing a nuisance, annoyance and disruption contrary to section 117 (2) of the Act through her conduct towards Ms. Al-Hamdan which they characterize as harassment. They ask that I issue an order

prohibiting the Applicant and Ms. Gurova from communicating with Ms. Al-Hamdan and from engaging in harassing conduct towards her. The Applicant argues that YCC 141's failure to address the smoke complaints has created an acrimonious relationship between Ms. Gurova and Ms. Al-Hamdan and that his mother is not harassing Ms. Al-Hamdan. He opposes any orders against him and Ms. Gurova.

- [42] It is clear from the evidence that there is intense animosity between Ms. Gurova and Ms. Al-Hamdan. This is particularly evident from the video of the security guard's investigation on January 27, 2024. In the video, Ms. Gurova knocks forcefully on Ms. Al-Hamdan's door two times before the security guard had an opportunity to do so and, when Ms. Al-Hamdan opens her door, she yells about the smoking and attempts to enter the unit. The security guard intervened to prevent Ms. Gurova from entering the unit, and he proceeded to investigate inside Ms. Al-Hamdan's unit without Ms. Gurova.
- [43] Harassment can include conduct that is a nuisance, annoyance or disruption, but it is not a prescribed and prohibited activity under subsection 117 (2) of the Act. Section 1 (1)(d)(iii.2) of Ontario Regulation 179/19 gives the Tribunal jurisdiction to consider a dispute involving harassment if the conduct relates to a nuisance that is prohibited or restricted by the governing documents or otherwise related to a provision in the governing documents. Therefore, the Tribunal does not have jurisdiction to consider a claim of harassment unless harassing conduct is addressed in a condominium corporation's governing documents (see *York Condominium Corporation No. 444 v. Ryan*, 2023 ONCAT 81).
- [44] YCC 141's Rule 3 states that "no owner shall do, or permit anything to be done in his unit or bring or keep anything therein which will ... obstruct or interfere with the rights of other owners, or in any way injure or annoy them..." YCC 141 argues that Ms. Gurova is acting in contravention of this rule in a manner that amounts to a nuisance contrary to subsection 117 (2) of the Act. I am not persuaded that the language of Rule 3 brings harassing conduct into the Tribunal's jurisdiction. I find that I do not have jurisdiction to consider the claims that Ms. Gurova has engaged in harassment or other conduct that amounts to a nuisance, annoyance or disruption in her interactions with Ms. Al-Hamdan.
- [45] Although I have found that I do not have jurisdiction with respect to the alleged harassment, I nonetheless urge Ms. Gurova and the Applicant to change their approach to their issues with smoke and odour in their unit, and to follow the directions outlined by YCC 141 in its letter of January 29, 2024. These directions asked Ms. Gurova and the Applicant to:
- Report any smoke odour complaints to YCC 141 in real time

(contemporaneously);

- Not handle investigations themselves and not interfere with YCC 141's investigations of their complaints; and
- Refrain from communicating or engaging directly with Ms. Al-Hamdan.

Condominium living necessarily involves living in a community with shared rights and responsibilities. I would remind the Applicant and Ms. Gurova that they have responsibilities to follow YCC 141's rules, including Rule 3, and the Act, and to work with YCC 141 with respect to any complaints rather than raising these issues directly with Ms. Al-Hamdan. I make no order with respect to Ms. Gurova's conduct.

[46] Secondly, YCC 141 seeks its costs on a full indemnity basis. The cost-related rules of the Tribunal's Rules of Practice are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decided otherwise.

48.2 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 relate to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[47] YCC 141 argues that the Applicant and Ms. Gurova have taken unreasonable positions in this matter and that they have engaged in unreasonable behaviour. In particular, YCC 141 states that it was unreasonable for the Applicant and Ms. Gurova to insist that there were smoke odours in the unit when the evidence did not support this and to complain that the condominium corporation was failing to investigate when Ms. Gurova was not making contemporaneous complaints, but general complaints only. YCC 141 also argues that, due to Ms. Gurova's conduct towards Ms. Al-Hamdan, it has incurred additional costs to send a legal letter to her and the Applicant to direct them to stop engaging with Ms. Al-Hamdan and to refrain from taking the investigation of complaints in her own hands.

[48] Although the Applicant was unsuccessful, I do not find that his behaviour in the proceeding was unreasonable or undertaken for an improper purpose. In particular, I note that, at the outset of Stage 3, the Applicant was seeking an order

from the Tribunal requiring YCC 141 to enact a rule prohibiting smoking in all indoor areas. YCC 141 identifies in its costs submissions that, in seeking this order, the Applicant had undertaken this matter for an improper purpose because this remedy is outside the Tribunal's jurisdiction. The Applicant requested this remedy and others in his opening submissions, but he did not seek this remedy in his closing submissions. Given that the Applicant withdrew this portion of his claim and was always seeking additional relief, I do not find that he was acting for an improper purpose in pursuing this application.

[49] The unreasonable behaviour that YCC 141 relies on in support of its claim for costs is behaviour that occurred between the parties within the condominium and not in this hearing. I find that this behaviour is not relevant to my consideration of costs in this matter.

[50] YCC 141 also relies on the indemnity provision in its By-law No. 4 to support its claim for costs. YCC 141 argues that it has incurred legal costs to address Ms. Gurova's harassing conduct towards Ms. Al-Hamdan, and that the Applicant is liable for her actions as his tenant. Therefore, YCC 141 states that the Applicant is required to indemnify it for its legal costs. These costs are not related to this hearing.

[51] A costs order is discretionary. On a review of the totality of the circumstances in this hearing, I do not find that an order of costs is warranted, and I award no costs to YCC 141.

### **C. ORDER**

[52] The Tribunal Orders that this application is dismissed without costs.

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Jennifer Webster  
Member, Condominium Authority Tribunal

Released on: March 6, 2024