Good Advice

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Often, we hear stories about condominium managers. We hear about the good ones and the bad ones, and we understand condo boards' frustrations from time to time. But here's the thing:

Though some managers might be villians, and only a few are truly heroes, all of them are human, and they are entitled to fair and humane treatment.

As a condominium directors, you have only the authority that the Condominium Act, 1998, gives you, and that power is also subject to the declaration and by-laws of your corporation. Further, in addition to authority, the Act imposes obligations on you. In particular, it imposes on you the obligation to exercise your authority in good faith, in honesty, with the degree of care, diligence and skill that are expected from people in a position of responsibility like yours. This is called your 'standard of care'. Typically, condominium directors consider this standard when it comes to dealing with things like unit owner concerns, procurement processes for condo projects, and handling the corporation's money. All too often that standard of care goes right out the window when it comes to dealing with your manager. This criticism cuts two ways.

First, there are boards who simply over-trust their managers. They expect (and some managers erroneously demand) that all responsibility for how the condominium runs should belong to the manager. Such boards fail to review status certificates, neglect making decisions about major contracts, don't bother to have at least one director sign every cheque or ensure that financial statement updates are available and reviewed at every regular board meeting. If your condominium operates in that sort of way, fix it. Remember: being on a condo board is a position of trust. If you are not watching over your stewardship – meaning, the condition, funds, and operation of your condominium – you have become one of the condominium's liabilities. You become its asset by taking your responsibility more seriously.

On the other hand, some boards go to the opposite extreme. They can become controlling, overly critical, overly demanding, unsupportive and disrespectful. None of those are good things. Some of them can be illegal. Under the Ontario Occupational Health and Safety Act, every condominium board is under an obligation to protect the condo's workers, including its managers, from workplace violence and harassment. This requires the board to regularly assess the risks of such treatment with respect to every employee and contractor that works there. The board should not fail to also look inwardly to see whether it, itself, could be the perpetrator or facilitator of such violence or harassment.

Subjecting a manager to ceaseless emails with irrationally short deadlines for response; demanding constant or immediate attention although knowing the manager has multiple properties to serve; berating managers in board meetings; putting the manager regularly on the defensive; peppering them with questions; insinuations of negligence; threatening the manager's employment; even just being excessively nitpicky and micro-managing – all of these behaviours can contribute to an oppressive work environment and can constitute genuine and actionable harassment.

Facilitating harassment could include such things as treating unit owner complaints as true without investigation, or even just being overly sympathetic to unit owner concerns in a way that leaves the manager feeling unsupported and vulnerable to attack. This form of harassment arose in a case some years ago between the Amalgamated Transit Union, Local 113, an d the Toronto Transit Commission (TTC). The TTC received customer complaints through Twitter that were often laced with foul language, harsh criticism and derogatory personal judgments about their employees. TTC often responded to these tweets in what seemed to be empathetic and understanding ways, such as "we're sorry to hear about your trouble," or "that wasn't nice at all". TTC was found at fault for not protecting its employees from online violence and harassment. The Arbitrator noted that "violence" can include "intimidation, abuse, threats…, swearing, screaming" as well as physical assault. Harassment itself is a kind of violence that includes "words, gestures and actions which tend to annoy, harm, abuse, torment, pester, persecute, bother and embarrass". No employee, and no condo manager, should be left unprotected from that sort of treatment.

The mandate in the Condominium Act, 1998, to conduct condo business in good faith and with the appropriate level of care, should be seen to impose on boards a requirement to be fully aware of the risks of workplace violence and harassment, and to take steps to prevent them, and, most especially, to ensure that you, yourselves, are not the source of it.

Adapted from a 2019 presentation to CCI – London and Area Chapter by CK LLP partner, Michael Clifton