



Davidson Houle Allen LLP  
Condominium Law

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***BY EMAIL ([mastersparky@hotmail.com](mailto:mastersparky@hotmail.com)) & BY REGULAR MAIL***

Joseph Dilworth  
Unit 765F Cedar Creek Dr.  
Gloucester, ON  
K1T 0B3

Dear Mr. Dilworth:

***Re: Ottawa-Carleton Standard Condominium Corporation No. 816 – Inappropriate Conduct  
Our File No.: 30299-100***

As you are aware, we act as legal counsel for Ottawa-Carleton Standard Condominium Corporation No. 816 (“OCSCC 816”, or the “Corporation”).

Please be advised that I have recently been contacted by the Corporation and informed that there are serious issues concerning your ongoing inappropriate conduct. During your service on the Board (2015-2016) and after your service ended in 2016, you have expressed various concerns regarding the Corporation, but unfortunately, you have been communicating your concerns in an inappropriate manner.

I am required to write to you to remind you of your obligations as a former Board Member, and to address the following issues:

- Your voluminous, and at times inappropriate, communications to the Corporation; and
- Your treatment of the Corporation’s Property Manager; and Board of Directors.

I have also been provided with background information regarding these issues, and have been provided with various email communications and correspondence, including the following:

**January 8 to January 11, 2016:** Emails sent between you, the Board, and the Property Manager;

**February 18 to February 22, 2016:** Emails sent between you, the Board and the Property Manager

**June 23, 2016:** Emails sent between you, the Board and the Property Manager;

**June 23 to June 27, 2016:** Emails sent between you and a unit owner, forwarded by the unit owner to the Property Manager; Email from the

	Property Manager to the unit owner;
<b>November to December, 2018</b>	Email communications with the Property Manager;
<b>January 21 to 25; July 20, 2018:</b>	Emails sent between you and the Property Manager;
<b>April 29 to April 30, 2018:</b>	Emails sent between you and the Property Manager;
<b>August 2, 2018:</b>	Emails sent between you and the Property Manager;
<b>August 13, 2018:</b>	Emails sent between you (under a different user name, Gellert Grindel) and the Condominium Management Regulatory Authority of Ontario, forwarded by you to the Property Manager;
<b>August 16, 2018:</b>	Email and letter sent to you from the Secretary & Vice-President of the Board;
<b>August 22 to September 16, 2018:</b>	Email and letter (undated) sent from you to the Secretary & Vice-President of the Board, which you also forwarded to the Property Manager, plus 5 forwarded emails;
<b>October 14, 2018:</b>	Email from a member of the Board was sent to you, offering to meet;
<b>October 18, 2018 (at 8:09am):</b>	Email and letter (undated) sent from you to the Board;
<b>October 18, 2018 (at 8:16 am):</b>	Email and letter (undated) sent from you to the Board;
<b>October 24, 2018:</b>	Email sent from you to the Property Manager.

In addition to the voluminous emails, you have made several harassing and threatening phone calls to the Property Manager.

I am also aware that on many occasions the Board and the Property Manager have warned you of your inappropriate behaviour, including a warning that you had breached your duties, or the code of conduct, as a Board Member in 2016. Unfortunately, despite the various warnings, you continue to act inappropriately.

I will deal with your concerns, and these issues in turn.

### **Your Concerns**

You have sent various communications to the Corporation about your ongoing concerns in relation to the following:

- Parking tickets;
- Tarps/ Covers on balconies;
- Balcony siding repairs;
- Property Manager's licence'
- Smoke Alarm;
- Board Meeting Minutes;
- Policies;
- Key to utility room;
- Vacuum by the bike racks;
- Carpet lying out on the property;
- Windstorm;
- Garbage.

The Board of Directors, and management, have made every effort to reasonably respond to you regarding your concerns. As you are aware, any issues that the Corporation becomes aware of, including the above-noted, have been dealt with or will be dealt with accordingly.

As you are also aware, the Corporation has an obligation to ensure that owners and occupiers of units, agents, and employees of the Corporation, comply with the *Condominium Act, 1998* (the "Act"), and the Corporation's governing documents.

The Corporation's position is that the Board Members, and the Property Manager have acted properly, at all times, in keeping with their obligations and duties pursuant to the Corporation's governing documents and condominium legislation, in dealing with the affairs of the Corporation.

## **Your Excessive Communications**

### ***Communications and Requests to the Corporation - Generally***

While condominium corporations generally have an obligation to respond to owner inquiries, that obligation is not absolute, nor is it unlimited. When an owner sends an inquiry to a condominium corporation, the owner may generally expect a response from the condominium corporation. If the inquiry is short, the condominium corporation may be in a position to provide an immediate response. However, the response in many cases, will not be an answer to the question posed, but rather be an invitation to review the Corporation's records so that the owner can satisfy themselves of the response.

A condominium corporation's obligations in relation to owner inquiries is governed by section 55 of the *Condominium Act, 1998*, and the Court interpretations of those decisions, as well as section 46 of the Act. In short, these sections of the Act, and the case law, confirm that if an owner has questions or concerns about the management and affairs of the Corporation, the owner's options are as follows:

- A. Requisition a meeting of owners (pursuant to section 46 of the Act), and ask questions of the Board of Directors at a duly called meeting. For reference, please find enclosed required forms (Preliminary Notice of Meeting of Owners, and Notice of Meeting Owners)

- B. Make a written request to review records of the Corporation, pursuant to section 55 of the Act. For reference, please find enclosed the required form (Request for Records).

The law confirms that the Corporation does not have an ongoing obligation to provide written answers to all questions posed by owners in email dialogues, nor does it have an obligation to prepare written reports, or cull documents, for individual owner inquiries.

In the case of OCSCC 816, your Board of Directors, and management, have made every effort to reasonably respond to your repeated, and individual, written requests for information or communication, notwithstanding that there was not a legal obligation to do so.

However, when an owner's inquiries become excessive, or when an owner's inquiries contain inappropriate language, unfounded allegations, or passive aggressive communications, a condominium corporation cannot be expected to respond to every inquiry. The reasoning is as follows:

1. The Board Members are all volunteers. They are volunteering in their spare time and have a limited amount of time to respond to owner inquiries.
2. The Property Manager is retained, pursuant to the Management Agreement, for the purposes of standard day-to-day management of the Corporation. Responding to excessive communications from an owner requires that the Property Manager invoice the Corporation for extra time spent in dealing with excessive communications.
3. More generally, the Corporation's resources are limited. The Corporation relies on these resources to carry out its objects and duties.
4. The Condominium Corporation must satisfy its obligations to all owners. Responding to all of your individual, and voluminous, inquiries requires a disproportionate amount of time and resources which should more fairly be applied to the Corporation's other obligations.

### ***Your Excessive and Inappropriate Communications***

Unfortunately, your communications – the volume, and at times inappropriate content – are no longer reasonable. To expand on my review set out above, a few examples are as follows:

- Sending an excessive number of email messages which are not always urgent in nature, on a continuous basis;
- Making false allegations or implying that the Property Manager, or Board or Directors, are incompetent. Examples include the following:
  - You have indicated that the Corporation is not fulfilling its obligations;
  - You have indicated that there have been ulterior motives;
  - You have indicated that there has been an abuse of power;

- You have questioned the time spent on dealing with the affairs of the Corporation, including the day to day maintenance/operational activities;
- You have indicated that the Board, and management haven't performed their duties properly. For example, you have made statements such as:
  - *"Normally you do a pretty good however it is things like this that people don't trust you, and think you don't know what your ("you're") doing."*
  - *"You normally do a pretty good job, the way you handled the immediate clean up after the windstorm and had Leslie Mitchell send an email to everyone letting them know it was being looked into, was done very professional. That is why it bothers me when your image keeps getting damaged by little things like this."*
  - *"As I mentioned at the AGM there is now a fear that they were denied service on purpose. Partially because of past relations and the fact that Liz literally walked past it every time she goes to and from her car, and did nothing to see it get fixed."*
  - *"It is abuse of power that someone can arbitrarily decide they think something is not "aesthetic" then use their power and fabricate something so they can manipulate the board in order to force their neighbours to remove an object. Meanwhile ignoring the damage the neighbour has to their balcony."*
  - *"To get what you wanted you deceived everyone and when confronted pretended the whole thing didn't happen and tried to intimidate ("intimidate") someone from speaking about what you did."*
  - *"I've been informed that you hate my "volume" of communication because "it creates work". If you really said that and, hate doing building repairs and maintenance than you're in the wrong profession."*
  - *"I'm asking you to permanently resign from the condo board."*

The purpose of this letter is to bring the importance of these matters to your attention, to advise you of the risks which such actions or behaviour presents to the Corporation, and to respectfully request that you cease sending repeated, unnecessary, and inappropriate communications.

As noted further below, the Corporation has a legal obligation to advise you that inappropriate communications to employees or contractors retained by the Corporation, whether verbal or written, cannot be tolerated.

### ***Corporation's Obligations in Relation to Workers***

As noted above, one of the reasons that the Corporation is required to send you this communication is to ensure that you are aware that some of the statements contained within your written communications are, arguably, a contravention of *Ontario's Occupational Health and Safety Act*, as amended by *Ontario's Bill 168*. I explain further as follows:

Any employee or contractor working on the Corporation's property is protected by standard employment legislation, including the *Occupational Health and Safety Act*. Employees or contractors of the condominium corporation are "workers" on the property, and accordingly, it is the obligation and duty of the Board of Directors of the Corporation to ensure that all "workers" are protected, as required by law. This includes the property manager, and any and all contractors retained by the Corporation.

### ***Communications with Monika Siniarska***

You should be aware, therefore, that your email communications to Ms. Siniarska, the property manager for the Corporation, are email communications to a "worker". I must caution you that, based upon my review of your email messages to the property manager, many of the statements and allegations contained therein may constitute harassment of a worker, and expose the Corporation to serious liability under employment legislation.

As noted above, such allegations or statements simply cannot be tolerated by the Corporation. Not only would it be inappropriate for the Corporation to allow it, but it also puts the Corporation at risks of potential claims.

### **Communications with the Corporation & Its Agents**

As noted above, the other purpose of this letter is to advise you as follows:

1. As of the date of this letter, the Corporation will not be responding to your voluminous email communications, and will only respond to appropriate communications, in writing, following a meeting of the Board of Directors.
2. You are not to contact the Board of Directors or the Corporation's Property Manager by telephone, unless it is a **legitimate emergency**.
3. The Corporation will accept all non-emergency communications from you, in a typewritten format only. These communications will be reviewed at the monthly meeting of the Board of Directors, and a response will be forthcoming in due course, as may be required. You are free to document legitimate concerns in a typewritten format, using appropriate language, without harassment or unfounded allegations.
4. As noted above, the Board's response, in many cases, will be an invitation for you to review the Corporation's records. The Board may respond by stating that you either requisition a meeting of owners, or make a written request to review records of the Corporation.
5. Should you not agree with any decision made by the Board, you must refrain from targeting individual Board members, or the manager. This is harassing and inappropriate behaviour.

## **Your Role as a Former Board of Director**

The purpose of this letter is also to confirm your ongoing duties of confidentiality now that you are no longer on the Board, and to remind you to refrain from divulging confidential information to which you were privy during your time as a member of the Board. I explain further as follows:

### ***Ongoing Obligations re Board Solidarity & Code of Ethics***

While serving as a member of the Board of Directors, you would have participated in dialogue, discussion and debate about the affairs of the Corporation. During such dialogue, discussion and debate, there may have been times when you disagreed with the opinions of other member of the Board of Directors, or with the final decision of the majority of the Board of Directors. However, as a member of the Board of Directors, and pursuant to the standard Code of Ethics for condominium directors (a copy of which you executed), once out of the boardroom, Board members maintain board solidarity.

In other words, members of the Board of Directors do not discuss the other opinions, comments, or statements made during meetings of the Board (or via email) in relation to the affairs of the Corporation. As further explained below, such dialogue, discussion and debate are confidential.

I take this opportunity to confirm that such obligations if board solidarity continue, in relation to matters and decisions taken, in which you were involved, during your time on the Board of Directors.

### ***Duty of Confidentiality of Board Members***

I turn now to the specific issue of confidentiality. As you are aware, there is no question that the owners in a condominium have a right to receive certain information. However, there are important limits upon these rights. Owners are not entitled to all information that is available to the Board of Directors. This is confirmed in section 55(4) of the *Condominium Act 1998*.

Furthermore, the Board, in its role as fiduciary of the Corporation, has a duty to determine when information can properly be conveyed to the owners.

Accordingly, Board members must keep matters confidential, at all times, which includes following the termination or resignation of a position on the Board, until or unless, the Board determines (by Board resolution) that the information can properly be disclosed outside the Board.

If a Board Member does not comply with this duty of confidentiality, that Board Member can be found in breach of his or her fiduciary and administrative responsibilities to the corporation.

In addition, should you not agree with a Board's decision, you should not be targeting individual Board members.

I hope that the foregoing is of assistance to you in confirming continued obligation to OCSCC 816 as a former member of the Board.

## Next Steps

As a result of all of the foregoing issues, the Board of Directors is of the view that you are not acting in the best interest of the Corporation.

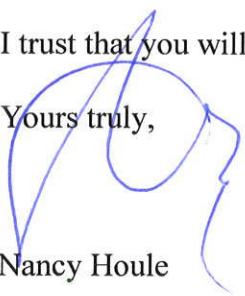
Accordingly, the Board of Directors is requesting that you refrain from engaging in conduct, which creates an unsafe, or harassing, work environment, and refrain from divulging confidential information to which you were privy during your time as a member of the Board.

I also take this opportunity to advise that your repeated requests for the resignation of a member of the Board of Directors is inappropriate. Any communications to that effect will not be acknowledged, nor responded to. As noted above, should you feel that any member of the Board of Directors should be removed from the Board of Directors, you are free to exercise your rights to requisition a meeting of the owners.

The Corporation has incurred legal fees related to this matter, but does not intend to charge these costs to you at this time. However, should further action be required, the Corporation will have no alternative but to seek recovery of such fees.

I trust that you will govern yourself accordingly, and that my further involvement will not be required.

Yours truly,

  
Nancy Houle

Encls.

Cc: OCSCC 816