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TAB 1

B52

MEDALLION CORPORATION

ZIPORA: 2709-565

Members of Greater Toronto Apartment Associations

TENANCY AGREEMENT dated the 01 day of DECEMBER, 20 10.

Made pursuant to the provisions of the Residential Tenancies Act, S.O. 2006, Chap 17, thereinafter the "R.T.A.")

BETWEEN: MEDALLION CORPORATION (Landlord)

304 (Unit No.) 970 Lawrence Avenue West, (Address) Toronto, (City) Ontario (Province) M6A 3B6 (Postal Code) (Landlord's Current Address)

NOTE: This is the legal name and address of the Landlord to be used for the purpose of giving notices or other documents under the R.T.A and this Lease. Tenant acknowledges the name and address of the Landlord are subject to change and in such event, the Tenants will direct notices accordingly to the new Landlord.

AND: ISAAC (GIVEN NAME) BON ~~HILLIER~~ (SURNAME) D.O.B. 19-Feb-1982 (DD MM YYYY) <- TENANT -> N/A (GIVEN NAME) (SURNAME) D.O.B. (DD MM YYYY)

AND: MARITZA E O (GIVEN NAME) ORTIZ (SURNAME) D.O.B. 04-Aug-1973 (DD MM YYYY) <- TENANT -> N/A (GIVEN NAME) (SURNAME) D.O.B. (DD MM YYYY)

RENTED PREMISES: 1. The Landlord agrees to rent to the Tenant and the Tenant agrees to rent from the Landlord.
2709 (Unit No.) 565 Sherbourne Street, (Address) Toronto, (City) Ontario, (Province) M4X 1W7 (Postal Code)
hereinafter referred to as the Rented Premises, and the following parking privileges for private passenger automobiles

PARKING: OUTSIDE n/a SPACE NO. n/a DECAL NO. n/a UNDERGROUND n/a SPACE NO. n/a DECAL NO. n/a
OUTSIDE n/a SPACE NO. n/a DECAL NO. n/a UNDERGROUND n/a SPACE NO. n/a DECAL NO. n/a

In the event that no parking space is available and the Landlord so notifies the Tenant, the Tenant agrees he will not use the Landlord's lands or any part thereof for parking or storing, temporarily or otherwise, a motor vehicle.

USE OF PREMISES: 2. The Tenant agrees to use the rented premises as a residential apartment and for no other purpose; to abide by the covenants, agreements, rules and regulations of this agreement, and not to allow the rented premises to be occupied by anyone other than the persons listed below:

OTHER OCCUPANTS: NAME: N/A D.O.B. NAME: N/A D.O.B.
NAME: N/A D.O.B. NAME: N/A D.O.B.

TERM 3. The Tenant shall occupy the Rented Premises, subject to the present Tenant vacating, for a term beginning on the 01 day of DEC., 20 10 and ending on the 30 day of NOV., 20 11.

Pro-Rated A pro-rated rent of $ n/a is to be paid in advance to cover the period from the n/a day of n/a, 20 n/a to the last day of n/a, 20 n/a.

subject to the terms of this Agreement. If the Landlord is unable to give possession of the Rented Premises on the commencement of the term for any reason, including, but not limited to construction delays or an over-holding Tenant, the Landlord shall not be subject to any liability to the Tenant or occupants and shall give possession as soon as the Landlord is able to do so. The rent shall abate until possession of the Rented Premises is offered by the Landlord to the Tenant. Failure to give possession on the date of commencement of the term shall not in any way affect the validity of this Tenancy Agreement, the obligations of the Tenant or in any way be construed to extend the term of this Tenancy Agreement. This Agreement shall be enforceable against all Tenants named as such herein, regardless of whether such Tenant actually chooses to occupy the Rented Premises.

RENT 4. (a) The Tenant agrees to pay the Landlord, at the Landlord's office or such place as directed in writing from time to time by the Landlord:

RENTAL CHEQUES ARE PAYABLE TO MEDALLION CORPORATION.

For Rented Premises per month		$ 1,200.00
PLUS for Parking Privileges per month	Outside	$
PLUS for Parking Privileges per month	Underground	$
PLUS for Additional Services per month		$
(specify services and amount for each)		$
TOTAL Monthly Rent payable in advance		$ 1,200.00

which shall be due and payable on the first day of each month for the term referred to in paragraph 3 herein.

SERVICES The Tenant, in addition to the Monthly Rental, agrees to pay the following services applicable to the Rented Premises:

Electricity YES ☐ NO ☑ Hot Water Heater YES ☐ NO ☑ Gas YES ☐ NO ☑ Other (specify) PHONE YES ☑ NO ☐

CABLEVISION NOT INCLUDED

SCHEDULE(S) Schedule(s) attached hereto are part of this Agreement.

5. Rent paid by anyone other than the Tenant named in this Agreement shall be deemed to have been paid on behalf of the Tenant.

(a) Arrears of rent shall bear interest at the rate of 2% per month compounded monthly which is the equivalent of 26.82 per cent per annum, calculated from the date following the date upon which the rent is due until paid and such interest shall be deemed as rent hereunder.

(b) (i) All payments herein are to be made by direct debit, money order or certified cheque only, unless otherwise directed by the Landlord. Acceptance of other forms of payment, from time to time by the Landlord, his agent or employee shall not be deemed a waiver of this term.

(ii) If the monthly Rental is paid by cheque and the cheque is not honoured at the bank upon which is it drawn, the Tenant shall pay to the Landlord, in respect of the dishonoured cheque, the sum of $ 25.00 as a service and administrative charge for each such cheque in addition to the aforementioned Monthly Rental.

PREPAID RENT 6. The Tenant agrees to deposit with the Landlord the sum of $ 1,200.00 as prepaid rent to be applied toward payment of the rent for the last rent period of the tenancy. In the event of a lawful rent increase, the Tenant shall pay an additional amount to increase the rent deposit in an amount equal to the increased Monthly Rental. The increased deposit may be paid by way of a credit by the Landlord of interest payable in respect of the deposit herein.

LEGAL COSTS 7. Tenant covenants to pay to the Landlord on demand all reasonable legal costs, charges and expenses (as between a solicitor and his own client) which may be incurred by the Landlord in taking, recovering and keeping possession of the rented premises or collecting rent and generally in any other proceeding taken in connection with this Tenancy by the Landlord and Tenant covenants to pay interest at the rate of 12% per annum on all amounts payable to the Landlord as rent or otherwise which are not paid on the due date from the due date until paid and to pay any costs incurred by the Landlord as a result of any cheque drawn by the Tenant not being honoured by the Tenant's bank upon presentation for payment and a service charge of $25.00 for the Landlord's trouble and inconvenience in the processing of each dishonoured cheque.

LOCKS 8. The Tenant hereby consents to any change of locks in the building in which the rented premises are located, save and except the doors leading directly into the rented premises, and agrees to not add or change any locks without written consent.

CARE OF PREMISES 9. The Landlord covenants to keep the rented premises in a good state of repair and the Tenant agrees to keep the rented premises in a reasonable state of cleanliness and not to make alterations or decorate, without approval in writing from the Landlord. If any decorating is done by the Tenant, it is agreed that the Tenant will restore the apartment to its original condition at their expense, or will reimburse the Landlord for restoration costs, wear and tear excepted, upon vacating the premises.

ASSIGNMENT AND SUB-LET 10. The Tenant covenants not to assign or sublet the rented premises without leave. Such leave shall not be arbitrarily or unreasonably withheld. The Tenant shall pay the Landlord's reasonable expenses incurred thereby.

RIGHT OF ENTRY 11. The Tenant agrees that the Landlord shall be entitled to enter the rented premises and view the state of repair and make such repairs and alterations as necessary. Such entry to be made in accordance with the Residential Tenancies Act.

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CONDITIONS OF PREMISES 12. The Tenant agrees that there is no promise, representation or undertaking by or binding upon the Landlord with respect to any alteration, remodelling or decorating of or installation of equipment or fixtures in the rented premises except such, if any, as are expressly set forth in this Tenancy Agreement.

DELIVERY SERVICES 13. The Landlord shall have the right to limit access to the building by delivery services where such services are not in the best interest of the building or its occupants.

RULES 14. The Tenant agrees to comply with each of the rules and regulations as outlined in Section 15 as they may from time to time be amended modified or added to upon notice to the Tenant by the Landlord.

TENANT FURTHER COVENANTS 15. The Tenant further covenants

(a) To deliver the keys of the rented premises, and the premises of the Landlord, on termination of this Tenancy Agreement

(b) That private automobiles will be parked only in spaces allotted to them from time to time by the Landlord and not in any other parking space unless authorized in writing by the Landlord. The Landlord will be furnished with such information as may be required to identify each automobile. The Tenant will affix to his automobile such marker as may be designated by the Landlord.

(c) That signs, advertisements or notices will not be posted or inscribed on any part of the building.

(d) That no awning, shade, flowerbox, aerial, air conditioning unit, nor any other item will be erected over or placed outside any window, door, or balcony without the written approval of the Landlord.

(e) That balconies will not be used for the hanging or drying of clothes, for barbecuing, storage, or for TV satellite dishes or antennae.

(f) Not to do or omit to do, or permit anything to be done or omitted to be done, in the rented premises, or bring or keep anything therein which will in any way create a risk of fire or other damage to the premises, or cause an increase in the premium of fire insurance on the building or contents.

(g) That no dog, cat, noisy bird, reptile or other animal will be kept or allowed on or about the rented premises.

(h) Not to cause or permit any noise or interference by an instrument or other device, which in the opinion of the Landlord is disturbing to the comfort of other Tenants.

(i) To place rugs to suppress noise which might disturb neighbouring Tenants.

(j) To only remove household furniture and effects from the premises at a time and in a manner previously consented to by the Landlord.

(k) That the sidewalks, entries, passageways and stairways used in common will not be obstructed or used by the Tenant for any other purpose than proper access to and from the rented premises. Bicycles shall not be admitted or carried into the building through the main public entrance or in the elevators or main halls, but must be kept in areas designated by the Landlord.

(l) Not to bring into the rented premises or into the building any stove, refrigerator, washing machine, clothes dryer, dishwasher, air conditioners or TV satellite dishes or antennae without written approval from the Landlord.

(m) That drapes and blinds provided by the Landlord will not be removed from the windows of the rented premises without the written approval of the Landlord.

(n) To purchase and maintain sufficient fire and water insurance to cover contents and/or any damage to rented premises caused by the Tenant, his family or guests through neglect or wilful damage as well as Tenant's Legal Liability Insurance.

(o) We may provide personal information about tenants or occupants to providers of utilities, services and or commodities to the buildings (including, without limitation, gas, electricity, water, telephone and cable TV).

RE-ENTRY 16. Proviso for re-entry by the Landlord, subject to the provisions of the R.T.A., on non-payment of rent or non-performance of covenants.

ELECTRICAL AND MECHANICAL 17. In the event of a breakdown of electrical or mechanical systems, or electrical appliances - i.e. refrigerators and stoves, the Landlord will not be liable for any loss, damages or personal discomfort, but the Landlord will carry out repairs, not due to Tenant's deliberate act or omission, with reasonable diligence.

ENTRANCE AND ELEVATORS 18. Where applicable, the Landlord agrees to provide the Tenant, his family, visitors and guests with free use of the passenger elevator and common areas at all reasonable times for the purpose of access to the rented premises. In case of damage, the Landlord shall have a reasonable time within which to carry out repairs.

PROPERTY TAXES 19. The Landlord will pay all real property taxes with respect to the rented premises as assessed against the Landlord, provided that if the Tenant wishes to change the assessment for school purposes, he pays any increased costs resulting therefrom.

IMPROPER USE 20. The Landlord and Tenant agree that neither, by their own acts or those of their family, servants, guests or agents, will do anything upon the premises which is objectionable, or which might injure the reputation of the premises. The Landlord agrees to do nothing that is unreasonably disturbing to the Tenant. The Tenant agrees to do nothing unreasonably disturbing to the Landlord or other Tenants.

NOTICE OF TERMINATION 21. (a) If either the Tenant or the Landlord wishes to terminate the tenancy at the end of the term created by this agreement, then he will give notice to that effect in writing not less than 60 days prior to the expiration of this agreement.

(b) If either party has given such notice (or any notice terminating the tenancy created by clause (c) hereunder) the rented premises may be shown to prospective Tenants at all reasonable hours after delivery of the notice.

(c) If no such notice pursuant to this paragraph has been delivered by either party then the Tenant shall become a monthly Tenant at the highest monthly rental payable hereunder and under the terms and conditions herein set out providing that nothing herein shall prevent the parties agreeing to any other terms for said monthly tenancy.

(d) The Landlord and Tenant further agree that the monthly tenancy created by (c) may be terminated by giving sixty (60) days written notice thereof, to be effective on the last day of the monthly tenancy.

(e) In the event that the Tenant is obliged to vacate the rented premises on or before a certain date, and the Landlord enters into a tenancy agreement with a third party to rent the rented premises herein described for any period thereafter to such third party, and the Tenant fails to vacate the rented premises on or before the due date, thereby causing the Landlord to be liable to such third party, then the Tenant will (in addition to all other liability to the Landlord for such overholding) indemnify the Landlord for all losses suffered thereby.

BREACH OF COVENANT 22. (a) Should the Landlord or the Tenant be in breach of any covenant contained herein (except the covenant to pay rent), the other party shall give written notice of such breach providing to the offending party seven (7) days to remedy such breach. Provided that if such breach be remedied there shall be no further liability for the breach.

(b) If the rented premises are vacant on the rental due date and no payment of rent has been received by the Landlord, it shall be presumed the Tenant has abandoned the rented premises and the Landlord shall be entitled to, and may take, immediate possession of the rented premises.

LIABILITY 23. The Landlord shall not in any event whatsoever be liable or responsible in any way for

(a) any personal injury or death that may be suffered or sustained by the Tenant or any employee of the Tenant or any employee of the Tenant or any member of the Tenant's family, his agents or guests, or any other person who may be upon the rented premises of the Landlord; or

(b) any loss of or damage or injury to any property including cars and contents thereof belonging to the Tenant or any member of the Tenant's family or to any other person while such property is on the rented premises or on the premises of the Landlord; or

(c) without limiting the generality of the foregoing, any damages to any such property caused by steam, water, rain or snow which may leak into, issue or flow from any part of the rented premises or the premises of the Landlord or from the water, steam, sprinkler or drainage pipes or plumbing works of the same or from any other place or quarter; or

(d) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring; or

(e) any damage caused by anything done or omitted to be done by any Tenants of the Landlord.

24. Except where otherwise provided by the R.T.A., any notice required or contemplated by any provision of this Agreement shall be deemed to be sufficiently given if served personally, or deemed to be received within 5 days of mailing post prepaid in any one of Her Majesty's Post Offices in the Province of Ontario, in a registered letter addressed to the Landlord as set forth herein, or to the Tenant at the address of the rented premises.

AMENDMENT OR WAIVER 25. No amendment or waiver of any part of this Tenancy Agreement shall be effective unless the same is in writing and attached to or endorsed on this Tenancy Agreement shall be effective unless the same is in writing and attached to or endorsed on this Tenancy Agreement by the Landlord or his authorized agent, it being specifically understood between the parties hereto that the Landlord's Janitors and Superintendents are NOT authorized agents within the meaning of this clause.

Everything contained in this Tenancy Agreement shall extend to and be binding on the respective heirs, executors, administrators, successors and assigns of each party hereto. The provisions shall be read with all grammatical and gender changes necessary. All covenants herein contained shall be deemed joint and several.

IN WITNESS WHEREOF the parties hereto have executed these presents.

SIGNED, SEALED AND DELIVERED
In the presence of:

Witness

Witness

Witness

MEDALLION CORPORATION

Per: _____ (Seal)
(Landlord)

_____ (Seal)
(Tenant)

Maritza E Ovopo. (Seal)
(Tenant)

RECEIPT OF TENANCY AGREEMENT:
I hereby acknowledge receipt of a fully executed duplicate original copy of the within Tenancy Agreement, this 01 day of December 10.

_____
(Tenant)

Maritza E Ovopo.

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TAB 2

B54

Isaac BonHillier

Quis Custodiet Ipsos Custodes?

Posts About Friends More Add Friend

Do you know Isaac?
To see what he shares with friends, send him a friend request.
Add Friend

Intro

Works at **Covfefe Killbox**

Systems Architect at **Guantanamo North, eh?**

Former Mac Monkey at Black Press Ltd.

Lives in **Toronto, Ontario**

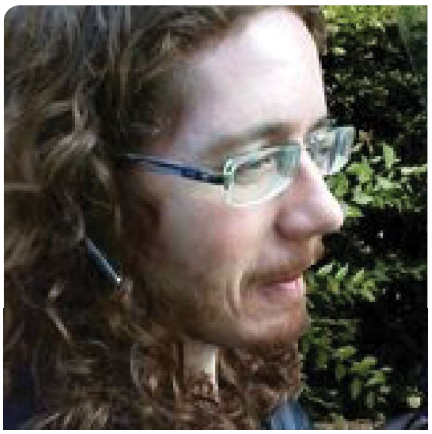
From **Sooke, British Columbia**

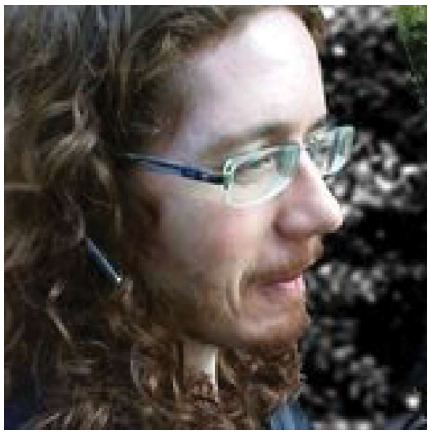
Married

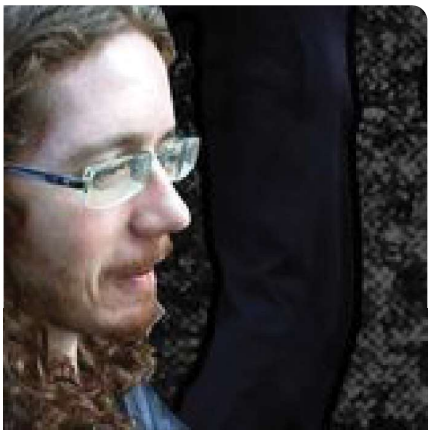
Followed by **30 people**

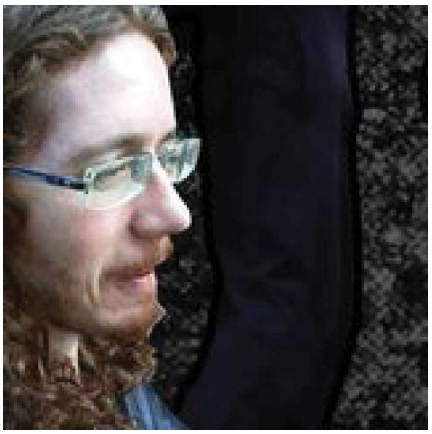
Photos

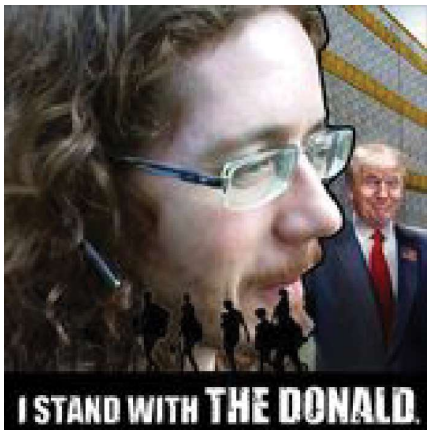
See All Photos

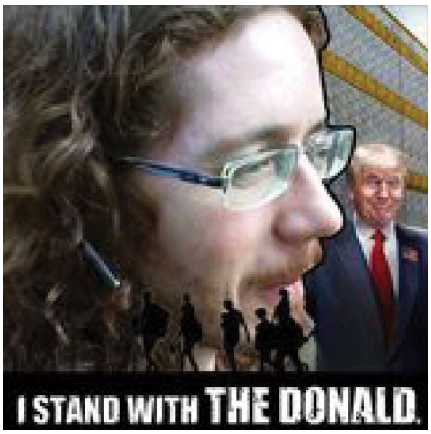












Friends

See All Friends

Life Events

See All

Started New Job at Covfefe Killbox
August 2018

Started New Job at Guantanamo North, eh?
December 9, 2017

Isaac BonHillier is with **Victor Pross** and **6 others** at **565ive Sherbourne Apartments**.
December 3 at 6:39 PM · Toronto, ON ·

So, Medallion has gone FULL NAZI. My apartment building is now an institutional facility, complete with harsh and optically degrading lighting.

unlocked our apartment.

They did that last night, and I went to the office today. I told Ms Schirf that she's just like the "Good Nazi." What did she say back?
"Yes, I am."
And told me to send them an email, as she cowered behind her plastic shield.

So, I came back up to my unit and ripped down the installation that they installed. I took it back, and dropped it off at the management office.

The original lights were lovely opaque quartz type installations. Beautiful, and softly glowing.

Now it's like Maplehurst Correctional Complex. It's ridiculous. Imagine having that RIGHT IN FRONT OF YOUR EYES every time you enter or exit your apartment.

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TAB 3

Mark W. Melchers

From: Mark W. Melchers <melchers@cohenhighley.com>
Sent: Thursday, December 17, 2020 11:45 AM
To: 'Isaac'
Subject: RE: Complaint Re Mark W. Melchers' Vexatious and Improper Conduct — LSUC #64734F [CHLAW-DMS.FID823257]
Attachments: Medallion N5.PDF

Mr. BonHillier,

Medallion accepts that you are exempt from the mask requirement, however, I want to emphasize that you are still required to observe the other COVID-19 protocols in the common areas of the residential complex (i.e. physical distancing).

As you requested, attached is an electronic copy of the N5. Although Medallion accepts that you are exempt from the mask requirement, the remainder of the N5 remains valid – including as it relates to the offensive and belligerent manner in which you have treated Medallion's staff and your removal of the light fixture from the common area hallway. Further, you are still not permitted to attend the rental office or management office because of the manner in which you have treated Medallion's staff, as outlined in the N5. As the cover letter that was delivered with the N5 states, if you need to communicate with Medallion, you may email Ms. Webb at roisinwebb@medallioncorp.com, and if attendance at the rental office or management office is required, Ms. Ortiz may attend.

Mark W. Melchers, Partner
Cohen Highley LLP Lawyers
London | Kitchener | Chatham | Sarnia | Stratford | Strathroy

55 King Street West, Suite 1001, Kitchener, ON N2G 4W1 | t. (226) 476-4444 x.428 | f. (519) 576-2830

From: Isaac <isaac@henrycase.org>
Sent: Monday, December 14, 2020 2:50 PM
To: Mark W. Melchers <melchers@cohenhighley.com>
Cc: Isaac <isaac@henrycase.org>; Mask Law Violations <complaints@masklaw.ca>; Rocco Galati <rocco@idirect.com>; Denis G. Rancourt, PhD <denis.rancourt@gmail.com>; Rob Roberts <rroberts@postmedia.com>; Ontario Human Rights Commission, Legal Intervention <legal@ohrc.on.ca>
Subject: Re: Complaint Re Mark W. Melchers' Vexatious and Improper Conduct — LSUC #64734F [CHLAW-DMS.FID823257]
Importance: High

Dear Mr Melchers,

Firstly, please refer to me in correspondence as "Isaac" or "Mr BonHillier". Secondly, I directly requested that you "..please PDF your wonderfully delicious Notice on Notice of Eviction? As you're fully aware of the hearings being conducted virtually, I'll require a proper and complete electronic copy for to make full answer [and] defence to any proposed litigation."

Please provide this, if your client really wants to continue with the pretence that this is a valid eviction notice, and not some petty form of discrimination. But puffery aside, I take it from your correspondence, that the client has not disclosed to you the fact that I have invoked my protections both in person, and in writing? That is unfortunate, and thank-you VERY MUCH for reminding me that the LTB is a SJT, and so the ceiling would be

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TAB 4

Security Report

#51142[illegible]631

59

B62

Icore

Issue Type

Disturbance (Activity)

Status

New Unassigned Issue

Property

Medallion Corporation
565 Sherbourne Street
Toronto, ON M4X1W7

Location

Elevator Lobby - Grnd FL

Reported By

565 Sherbourne Street

Issue Timeline

Created	Fri 02/19/21 03:26 PM	SHERBOURNE1
Assigned To		
Acknowledged		
Arrived At		
Closed		

Additional Details

Assigned By	
Reported Address	565 Sherbourne Street
Reported Unit	
Problem Address	
Problem Unit	

Reported Detail

On Feb 19th 2021 at 1351 hrs, the writer (Decoyda Larsen Paragon Protection LTD 10870627) was in the Security change room when the writer heard a loud male voice yell out the word and security quites this FUCK and a loud bang. The writer went out to check what had happen but did not notice anything. The writer radioed to the front deck who checked the cameras and found that at a few moments before the writer went out, there was a male who resembled 2709. Video and Pictures have been made.

Note:The video clip involves 565 Cleaner Anna.

Notes

Mon 2/22/2021 9:27 AM - SHERBOURNE1

Updated Feb 22nd 2021. The writer spoke to 565 Cleaner Anna who reported that she was in Ele#5 with another female who got on the 2nd floor. When they got to the main floor, the female got out and 2709 attempted to get in. When he was told by the cleaner that he could not get in because he was not wearing a mask, that made him furious. Anna pressed the door close button and once the door was closed, she heard yelling and a loud bang on the door on the elevator but at the time, was not sure what it was. She spoke to Bruce once she got into P1

Mon 2/22/2021 10:52 AM - JONBAI

Email To:Roisinwebb@medallioncorp.com
Email From:Jonbai
Email Subject:Medallion Corporation - (S) Disturbance (Activity)
Email Body:
Attaching Issue with Email

B62

Mon 2/22/2021 9:31 AM - SHERBOURNE1

Mon 2/22/2021 9:31 AM - SHERBOURNE1

Mon 2/22/2021 9:31 AM - SHERBOURNE1

TAB 5

B65

February 25, 2021

Isaac Bon Hillier
Maritza E. O. Ortiz
2709-565 Sherbourne Street
Toronto, ON M4X 1E7

Dear Tenants:

Re: Your Tenancy at 2709-565 Sherbourne Street, Toronto, ON (the "Rental Unit")
Ongoing Conduct Issues

On February 19, 2021 at approximately 1:51 p.m., Mr. Bon Hillier was in the common area of the residential complex on the main floor outside the elevators. When an elevator door opened, one resident exited the elevator, and the building cleaner (the "Cleaner") remained on the elevator to continue down to the parking level.

The Cleaner asked Mr. Bon Hillier not to enter the elevator because he was not wearing a face mask or other face covering. While the landlord accepts that Mr. Bon Hillier is exempt from wearing a face mask or other face covering in the residential complex's indoor common areas, as he has been previously advised, he is still required to comply with the other COVID-19-related protocols in place, including physical distancing.

In response to being asked by the Cleaner not to enter the elevator (and instead to take the next elevator), Mr. Bon Hillier became enraged, and loudly yelled the word "fuck" and kicked the elevator door once it closed. This obscenity and a loud bang caused by Mr. Bon Hillier kicking the elevator door could be heard inside the elevator and throughout the main floor common area of the residential complex.

The conduct described above substantially interferes with the landlord's reasonable enjoyment of the residential complex for all usual purposes. It also substantially interferes with the landlord's lawful rights, privileges, and interests.

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MEDALLION

The landlord demands that Mr. Bon Hillier immediately and permanently cease all conduct within the residential complex that substantially interferes with the landlord's reasonable enjoyment of the residential complex and/or substantially interferes with the landlord's lawful rights, privileges, and interests. If he continues engaging in such conduct, the landlord will serve you with a notice of termination of your tenancy, and may also proceed with an application to the Landlord and Tenant Board seeking an order terminating your tenancy.

I trust the foregoing is satisfactory and that you will govern yourselves accordingly.

Yours very truly,

Roisin Webb

Property Manager

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TAB 6

Security Report

#532307865

65

B68

Icore

Issue Type

Domestic Problem

Status

NOT Acknowledged

Property

Medallion Corporation
565 Sherbourne Street
Toronto, ON M4X1W7

Location

Elevator Lobby - Grnd FL

Reported By

565 Sherbourne Street

Issue Timeline

Created	Tue 04/20/21 09:04 AM	SHERBOURNE1
Assigned To	Tue 04/20/21 09:04 AM	JONBAI
Acknowledged		
Arrived At		
Closed		

Additional Details

Assigned By	SHERBOURNE1
Reported Address	565 Sherbourne Street
Reported Unit	2709
Problem Address	
Problem Unit	

Reported Detail

Incident Reported Date/Time: Monday, April 19. 2021, at 1605 hours
Incident Cleared Date/Time: Monday, April 19. 2021, at 1608 hours
Company: Paragon Protection Limited
Client: Medallion Corporation
Location: 2709-565 Sherbourne Street Toronto, Ontario M4X 1W7, Elevator Lobby
Incident Type: Domestic Problem

Synopsis:
A known tenant was found verbally abusing an elderly man at the above location, time, and date. The known tenant was not wearing any type of PPE, however, he was seen in the elderly gentleman's personal space and very close to his face. Security arrived upon the start of the verbal abuse incident and told the known tenant to leave the premises.

Narrative: On Monday, April 19. 2021, at 1605 hours, Site Security Supervisor (SS), JONATHAN BAILEY #11170455, Paragon Protection Limited (PPL), and Team Leader (TL), BRANDON MARAVILLA #11107239, PPL were traveling to the change room located at 565 Sherbourne Street, Toronto, Ontario M4X 1W7, Elevator Lobby to perform their shift change. Upon arriving at the elevator lobby, the writer overheard loud yelling coming from in-between the elevators. The writer saw a known tenant by the name of ISAAC, BON HILLIER, 2709-565 Sherbourne Street, Toronto, Ontario M4X 1W7 in another elder gentleman's face, yelling and screaming at him with no PPE (Mask). SS BAILEY yelled over Mr. ISAAC, BON HILLIER advised him to knock it off and to back up. SS BAILEY asked what was going on. Mr. ISAAC, BON HILLIER reported that the elder gentleman had told him he has to wear a mask and when he was told to wear the stated mask, he got defensive and started flailing on the elder gentleman.

Mr. ISAAC, BON HILLIER stated multiple times that he is exempt and SS BAILEY informed him that it is fine that he didn't want to wear a mask, however, he should be wearing a shield at least. SS BAILEY asked Mr. ISAAC, BON HILLIER where he was going. Mr. ISAAC, BON HILLIER advised that he was leaving the building. SS BAILEY advised him to do so. Mr. ISAAC, BON HILLIER left without issues.

SS BAILEY and TL MARAVILLA spoke to the elder gentleman, to see if he was okay. The elder gentleman stated that everyone should be wearing a mask. His concern was that he is in and out of the hospital 3-4 times a week. Now that Mr. ISAAC, BON HILLIER in his personal space he was even more concerned about his health.

The elder gentleman walked away without saying a word as if he was in shock, frustrated, and/or angry.

Nothing further to report at this time.

B68

MR. DAVID BAYLES STATEMENT:

Incident Reported Date/Time: Thursday, April 22. 2021, at 1057 hours
Incident Cleared Date/Time: Thursday, April 22. 2021, at 1101 hours
Company: Paragon Protection Limited
Client: Medallion Corporation
Location: 1209-565 Sherbourne Street Toronto, Ontario M4X 1W7 Canada, 12th Floor
Incident Type: Domestic Problems

Synopsis: Security followed up with the tenant who resides and the above location to retrieve a statement about what happened on Monday, April 19. 2021 at 1605 hours. The tenant provided a statement through audio recording.

Narrative: On Thursday, April 22, 2021, at 1057 hours, I, Site Security Supervisor (SS), JONATHAN BAILEY #11170455, Paragon Protection Limited (PPL) followed up with a tenant by the name of DAVID BAYLES of 1209-565 Sherbourne Street Toronto, Ontario M4X 1W7 Canada about an incident that occurred on Monday, April 19, 2021, at approximately 1605 hours, between Mr. BAYLES and ISAAC, BON HILLIER of 2709-565 Sherbourne Street Toronto, Ontario M4X 1W7 Canada.

Mr. BAYLES stated that this incident is not the first time he has come across Mr. ISAAC, BON HILLIER. For every encounter Mr. BAYLES has had with Mr. ISAAC, BON HILLIER, he refuses to wear a mask and that it's not that Mr. ISAAC, BON HILLIER forgets to wear a mask but he is being defiant to wearing a mask.

Mr. BAYLES reported that Mr. ISAAC, BON HILLIER mocks him every time they run into each other and he also stated that it's not just with him but other people of 565 Sherbourne Street Toronto, Ontario M4X 1W7 Canada. Anyone seen wearing a mask, Mr. ISAAC, BON HILLIER will continuously mock them and spout out subtle signs in regards to masks ruining the immune system.

On April 19th, 2021, while Mr. BAYLES was taking the elevator with Mr. ISAAC, BON HILLIER, Mr. ISAAC, BON HILLIER started to address his opinions towards MR. BAYLES. Mr. BAYLES stated/responded by saying "People like you are making my life that much more difficult, in this pandemic." At which point starting screaming at Mr. BAYLES.

Mr. BAYLES reported that when they reached the lobby, Mr. ISAAC, BON HILLIER yelled at Mr. BAYLES saying "How dare you say anything to me (Mr. ISAAC, BON HILLIER) and my wife, somewhere along those lines as per Mr. BAYLES.

MR. BAYLES was accused of openly attacking Mr. ISAAC, BON HILLIER when all he was trying to get across was that Mr. ISAAC, BON HILLIER and his wife aren't wearing masks and that is not fair. Thereafter Mr. BAYLES comment, Mr. ISAAC, BON HILLIER blew up at him and at that time security intervened and demanded Mr. ISAAC, BON HILLIER to back up and to knock it off.
Mr. BAYLES expressed his concern about Mr. ISAAC, BON HILLIER about him being temperamental and that whenever they do run into each other, Mr. ISAAC, BON HILLIER may continue his vulgar actions.

Mr. BAYLES advised that he has not seen Mr. ISAAC, BON HILLIER since April 19th, 2021. SS BAILEY gave MR. BAYLES his business card and should he ever feel unsafe or be near Mr. ISAAC, BON HILLIER to give security a call and they will help deescalate the situation.

Nothing further to report at this time.

Tue 4/20/2021 9:04 AM - SHERBOURNE1

Tue 4/20/2021 9:05 AM - SHERBOURNE1

B70

Tue 4/20/2021 9:05 AM - SHERBOURNE1

Tue 4/20/2021 9:06 AM - SHERBOURNE1

Tue 4/20/2021 9:08 AM - SHERBOURNE1

B70

B71

TAB 7

69

B72

Isaac BonHillier is feeling puzzled.

April 19 ·

Typical Karen: "I have a compromised immune system, put on a face diaper for my own protection..."
Me: "No, if you're at risk stay at home or I'll put you in the hospital."

Why is it MY responsibility to ensure YOUR own comfort?

1

Like Share

B72

20

B73

Isaac BonHillier is 😠 feeling angry with **Chris Weisdorf**and **3 others** in **Nuremberg**.

June 20 ·

Oh, incidentally regarding the recent pop-up euthanasia clinic at 565ive Sherbourne Apartments and 561 Sherbourne Residences, where they were administering a potentially lethal concoction called the Pfizer #SpikeProtein therapy to anyone 12-years of age and up.

There has been a rash of #AdverseEvents as a DIRECT result of mRNA such as Pfizer and did you know that — just like in the #NurembergTrials— people and corporations facilitating the mass slaughter of the undesirable persons may be held liable and potentially sentenced to death?

That was a really careless thing you did, Medallion. You really should have consulted with the legal representatives you have on retainer to harass your unclean tenants. You should have contacted Cohen Highley LLP or phoned them at (226) 476-4444 or email them at melchers@cohenhighley.com to see if it was a good idea to open yourselves up to legal liability for the wholesal slaughter of certain individuals who aren't responding that well to the synthetic mRNA #SpikeProtein cultivating injection like this poor fellow in BC.

The FordNation supposed "liability protection" won't save you. Did you know that there's an international team building cases against #BrownShirts just like you? It's called #Nuremberg2 and NOBODY gets a free pass, even if they claim that it's impossible for them to commit crimes similar to the Nazis because they're of "fine Jewish blood".

Talk to your lawyers, and NEVER host another euthanasia clinic at any of your locations, because I think they're watching you now.

You think it was rough dealing with me over your masking overreach? I cannot wait to see how you explain away being a party to nefarious treatment of so many undesirable #Goyim in your buildings.

SHERBOURNESITE.ORG

Victor's Pfizer Testimonial 31YO-M

Like Share

B73

24

B74

Isaac BonHillier is feeling kind at **565ive Sherbourne Apartments**.

August 5 · Toronto ·

Wherever I go, people are wearing masks. When I see a person with a mask, I often exclaim that "masks for for slaves and criminals, so which are you?"

If there's time, I'll add the third option of "cosplaying as a doctor or nurse."

And if the person I'm talking to has a stereotypical slavery backdrop, I can add the seasoning of "your ancestors would be ashamed of you, for you are willingly submitting to slavery."

I've done it so often it comes naturally, and if you ask it in an authentically caring fashion, it really fucks with people. They will rarely lash out at you, and even if they do, it's usually verbal.

And if they physically attack you, that can be dealt with too.

APARTMENT & CONDO BUILDING

565ive Sherbourne Apartments

1

3 Comments

Like Share

B74

BLACKLIST

Medallion Corporation: Encouraging Wholesale Discrimination

BY **MEDALLION CORP...**, 07 DECEMBER, 2020

Unfortunately, you have improperly trained your staff at 565 Sherbourne St, resulting in a culture of fear and persecution against those who cannot (by reason of medical or ideological significance) wear a mask or other face covering. I even went out of my way to (at considerable cost to myself) print out an earlier copy of the attached notice to be posted in your building informing residents and staff that as masks are mandatory requirements, there are certain exemptions.

Despite having been previously put on notice regarding its encouragement of wholesale discrimination, the Management at Medallion Corporation proudly claims

that as it is of Jewish descent, it is immune to acting like a Nazi Brown Shirt enforcer for Stalinist Russia.

On the contrary, they should be exercising abundant caution so that they do not act in any fashion resembling a[Good Nazi™](#).

This article is to be continued, but we're including the proper signage we've been posting in order to inform residents and employees of the REAL Mask Law provisions...

...riminatory signage, which serves to encourage the fear and loathing of tenants without a face covering. This results in "Good Nazi" enforcement.

The second example is the proper signage we posted around Sherbourne Site, after which we have received 2 formal eviction notices as a direct consequence of our efforts (see also [Malingering & Deception](#)). This is the proper signage we posted around Sherbourne Site, after which we have received 2 formal eviction notices for our efforts.

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Ontario Enacts Provincial Emergency and Stay-at-Home Order

04/07/2021, BY ONTARIO

COMMENTS

25

B78

Subject

Say something, or is your mouth full of cake...

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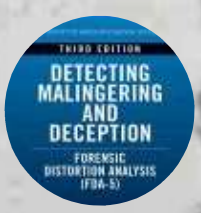
now made it MANDATO

face covering in all comm

stores, hallways, la

applicable), etc. beginnin

BROWNSHIRT FASCISM



Complaint re Melchers Vexatious Conduct (followup)

12/15/2020, by Chad W. Testes

Tenant Complaint re Melchers Conduct

12/13/2020, by Chad W. Testes

Mandatory Mask Law Noncompliance Exemptions

12/07/2020, by Covfefe Operations

B78

Medallion Corporation: Encouraging Wholesale Discrimination

12/07/2020, by Medallion Corp...

Can You Stop Multiple LTB Applications by a Vexatious Litigant?

11/05/2015, by Mark Melchers

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Brimstone

Complaints

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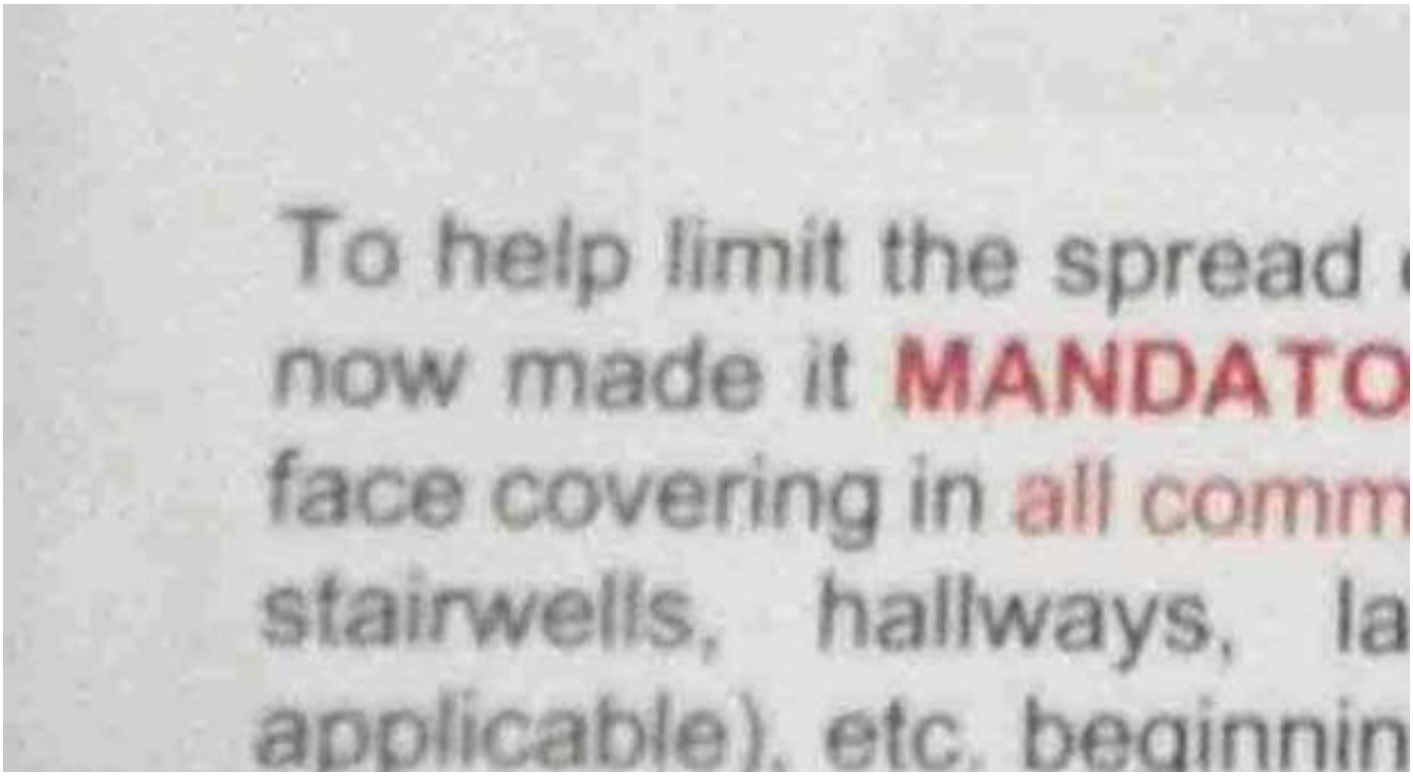
Rebellion

Semper Fi, bastards.

B80



B80

78
B81

NOTICES

Sherbourne Die Statte COVID-19 Euthanasia Clinic

BY **DR PETER MUNCH...**, 18 JUNE, 2021

Tweet Share

B81

79

B82

COVID-19 VACCINE CLINIC

2ND FLOOR — 561 SHERBOURNE ST

— FROM 12:00PM UNTIL 3:00PM —

Don't have your first dose of the COVID vaccine ye
We are offering vaccinations in your building

- Pfizer is available for anyone 12 years old and up
- If you have any questions or concerns, drop by and speak to one of our doctors
- International students and work permit residents are welcome

If you have an adverse reaction or die subsequent your injection of this unapproved shot, you may s Medallion Corporation for its part in your death.

Restrictions and Liability

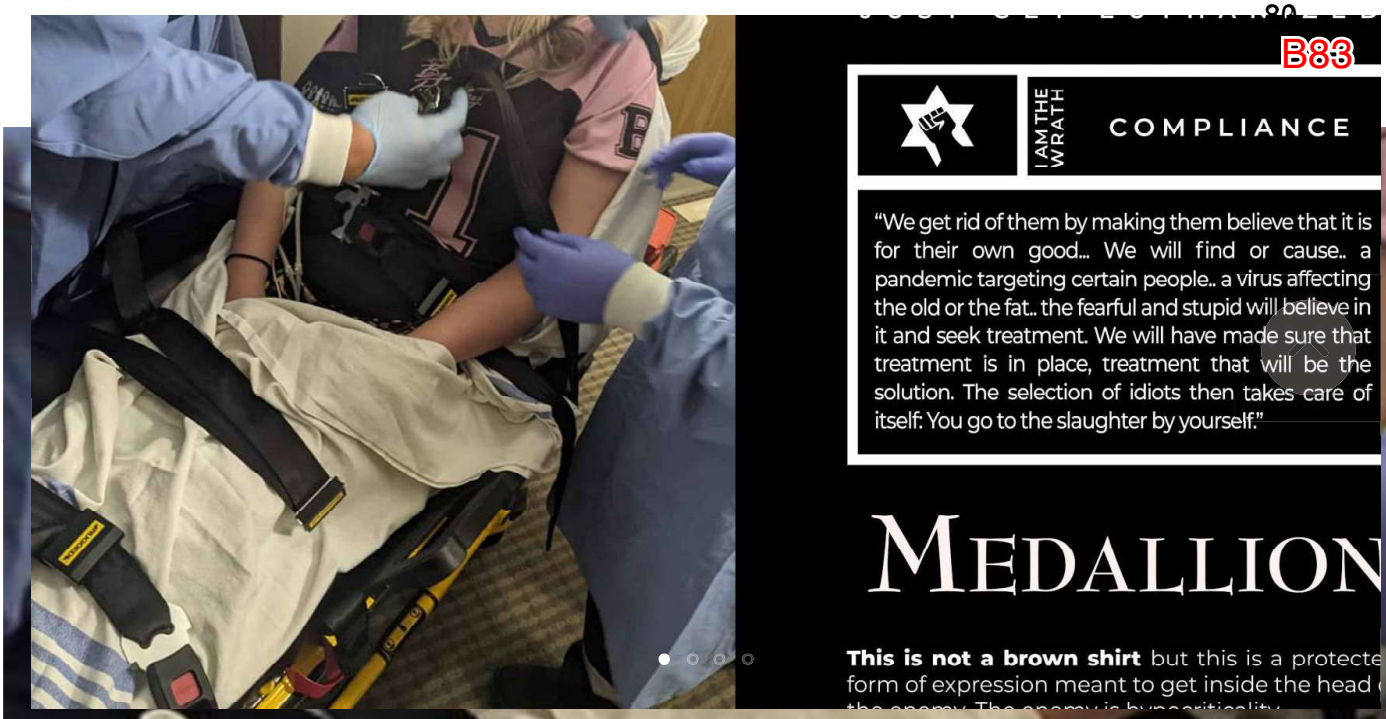
- No appointment needed, just walk in
- Priority is for residents of 561 and 565 Sherbourne St.
- Bring your OHIP card if you have one; not mandatory
- Enter for your chance to win a free funeral
- This is a Public Service Announcement

Learn more at KillingOntario.ca

SHERBOURNE
DIE STATTE

B82

JUST GET EUTHANIZED



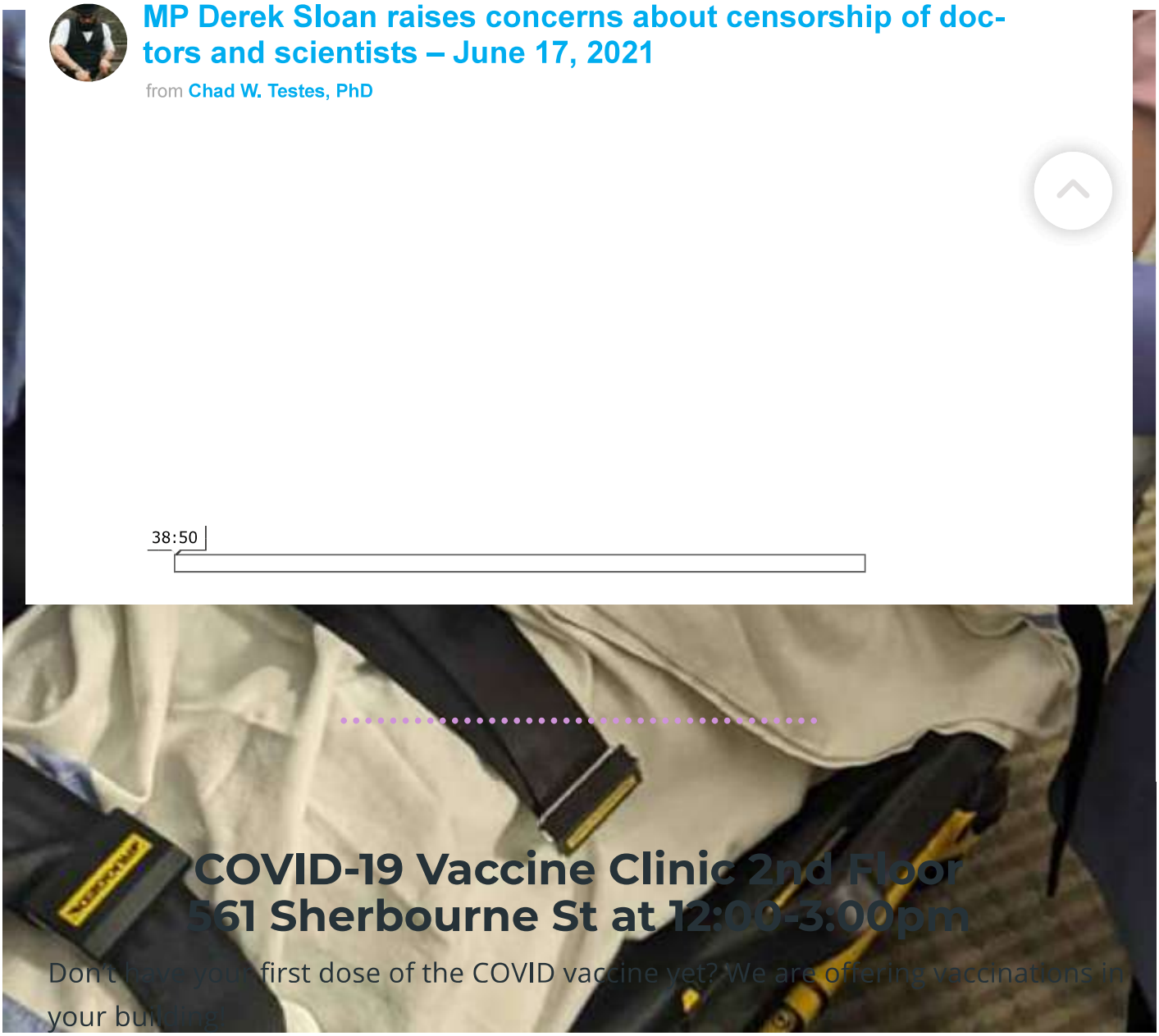
There was a press conference at parliament about the censorship and pure Gobbels-style push for mass vaccination with the experimental and unapproved MRNA therapeutic, specifically Pfizer and Moderna. Now, we've got a "pop-up" that was rushed into our building.

Your support with ensuring the informed consent of our neighbours is greatly appreciated. Below is the presser held by Derek Sloan which appears to have triggered this [most recent] culling.

B83

84

B84



- Pfizer is available for anyone 12 years old and up
- If you have any questions or concerns, drop by and speak to one of our doctors
- International students and work permit residents are welcome
- If you have an adverse reaction or die subsequent to your injection of this unapproved treatment, you or your estate may sue Medallion Corporation for its part in your death. See Medallion & State Agency Liability.

B84

Restrictions and Liability

82

B85

- No appointment needed, just walk in
- Priority is for residents of 561 and 565 Sherbourne St.
- Bring your OHIP card if you have one; not mandatory
- Enter for your chance to win a free funeral
- This is a Public Service Announcement Learn more at SherbourneSite.org

YOU MAY ALSO LIKE

B85

B86

Natallia's Pfizer Testimonial

04/06/2021, BY DR PETER MUNCH...

B86

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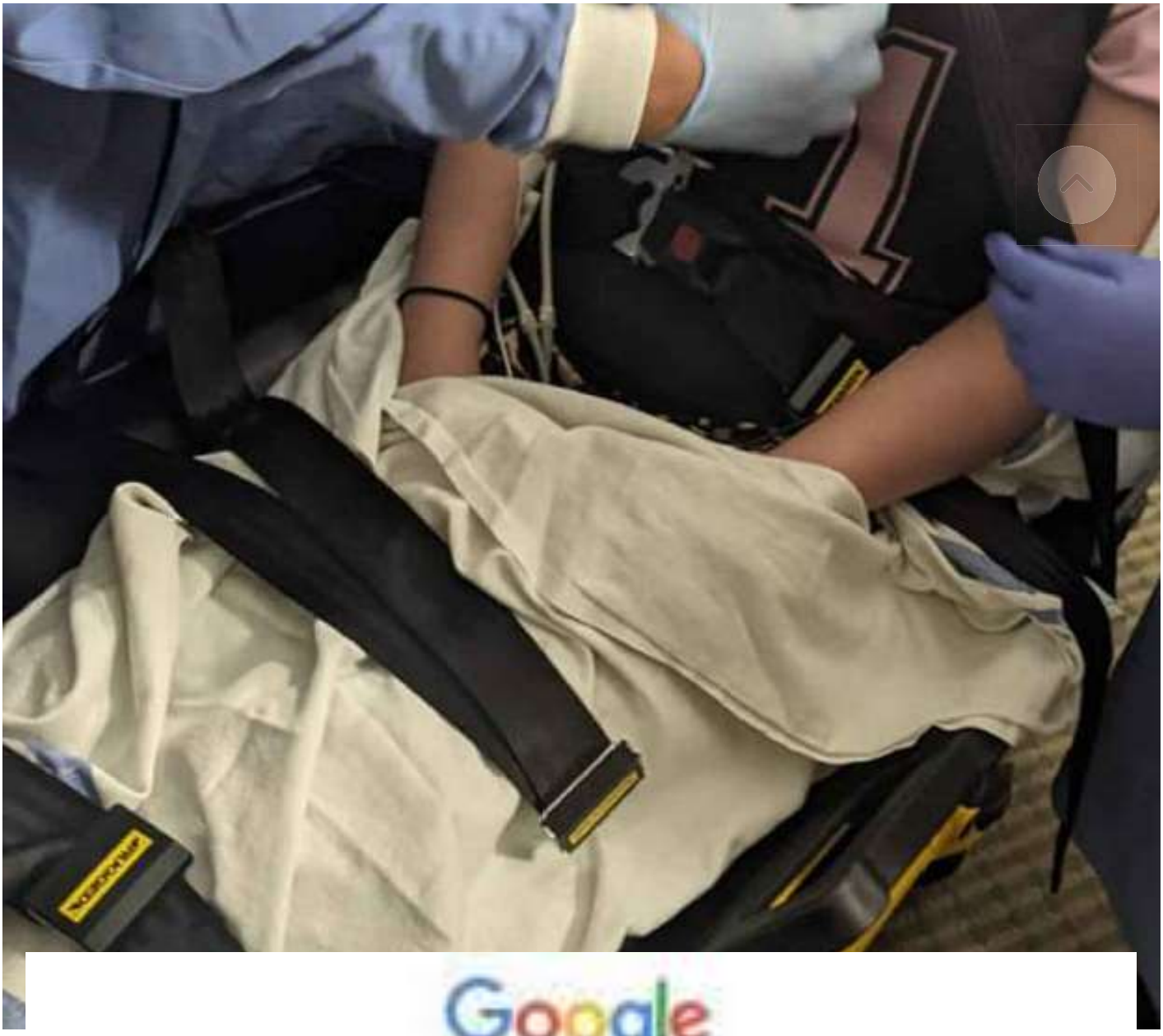
B87



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who has the largest criminal.fine in history

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zer received the largest criminal fine in histo
zer also paid $1 billion to resolve allegations un
civil False Claims Act that the company illegall
moted four drugs—Bextra, anti-psychotic drug
odon, antibiotic Zyvox, and anti-epileptic drug
ica. Aug 26, 2021
https://marketrealist.com › who-paid...
zer Paid the Largest Criminal Fine in US
tory—Lawsuit Details - Market Realist
Meme Warfare
Pfizer is trustworthy. Trust me.
09/22/2021, BY DEPARTMENT OF ...

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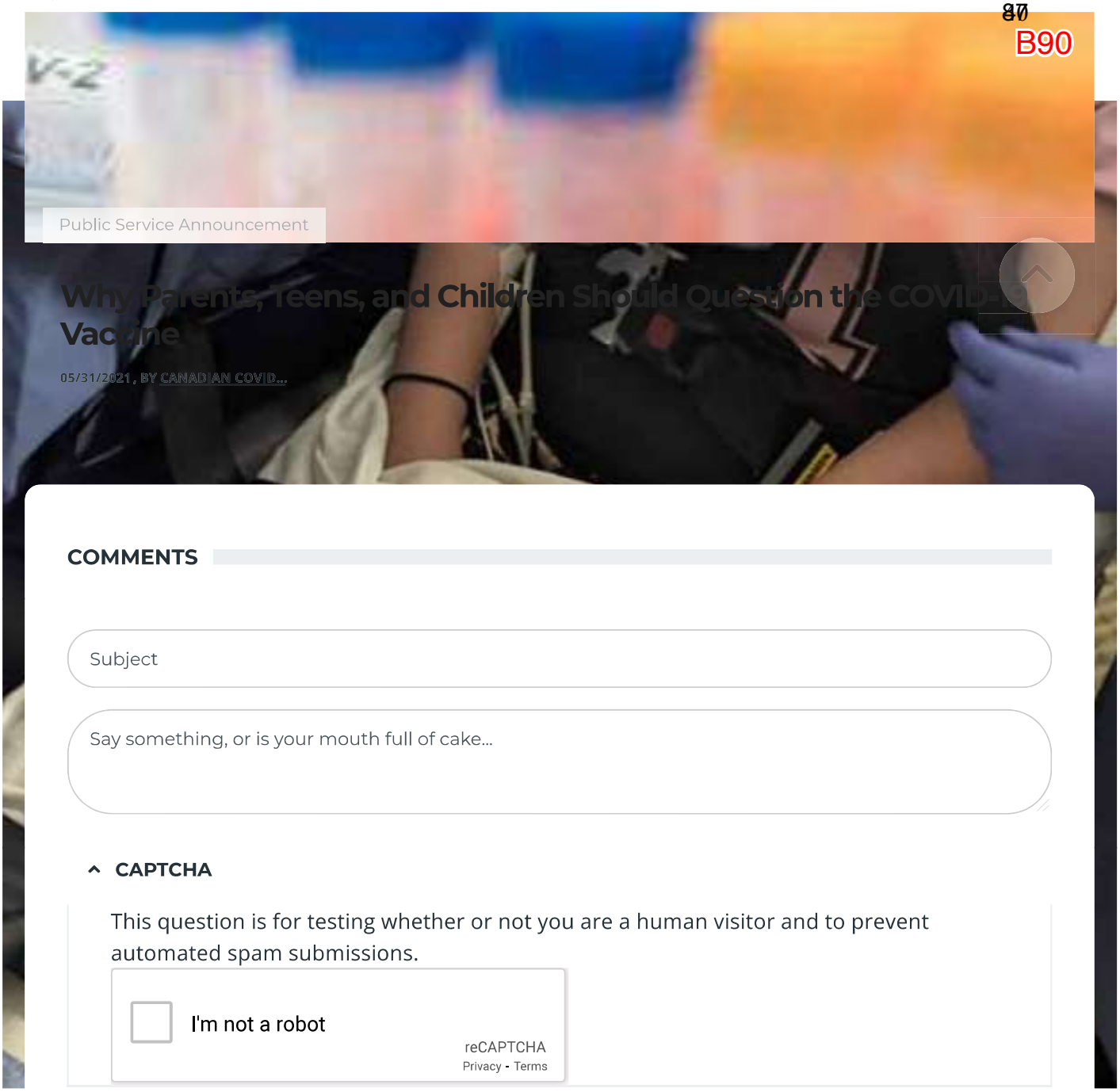
B90



Public Service Announcement

Why Parents, Teens, and Children Should Question the COVID-19 Vaccine

05/31/2021 , BY CANADIAN COVID...

COMMENTS

Subject

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How Many Other Government Propaganda Techniques Have Been Used To Keep Canadians In A State Of Fear & Panic?

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Canadians In A State Of Fear & Panic?

09/28/2021 , by Spencer Fernando

The Future Belongs To Freedom & Canada's Embrace Of Authoritarianism Is A Huge Mistake

09/01/2021 , by Spencer Fernando

Nicole Sirotek, NYC Whistleblower (Viral Meltdown)

09/10/2020 , by nsirotek

Dr Carrie Madej on the Dangerous ModeRNA Vaccine

09/01/2020 , by Dr Carrie Madej

The good times are over for Doug Ford

10/21/2020 , by Bob Hepburn

Stop The Ontario Fraud

01/17/2021 , by Chad W. Testes

Mar28 COVID Fraud: A Priori Error + Comorbidities

03/30/2021 , by Covfefe Operations

Kushagra Talwar

04/10/2021 , by CIMIC-PSYOPS 41

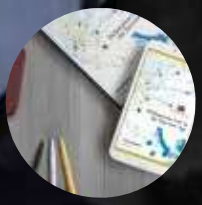
B92

Courtney's Pfizer Testimonial

06/19/2021 , by Dr Peter Munch...

Jane's Pfizer Testimonial

06/25/2021 , by Dr Peter Munch...



Defamation Law in the Internet Age (Full)

06/08/2020 , by Law Commission...

Mask Exemption: Toronto Residential Bylaw Counterstrike

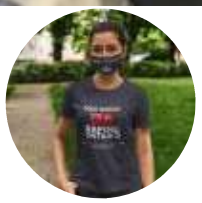
10/03/2020 , by Chad Westes

What is Operation Brimstone?

11/24/2020 , by Covfefe Killbox

8 European Nations Stop AstraZeneca COVID-19 Vaccine on Reports of "Serious" Blood Clots

03/11/2021 , by GreatGameIndia



Ontario Enacts Provincial Emergency and Stay-at-Home Order

04/07/2021 , by Ontario

Children of Men Vaccine Testimonial 001

05/17/2021 , by robyn

B92

0

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Complaints

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Lawsuit

Rebellion

Semper Fi, bastards.

Got a complaint? Use the Feedback form. Wanna sue the Covfefe? Get in line, or use the Lawsuit form, and we'll give you details for service of claim. You better have a good lawyer though, because we will invoice you for wasting our time.

B94

B94

B95

TAB 8

CITATION: Halton Condominium Corp. No. 77 v. Mitrovic, 2021 ONSC 2071
COURT FILE NO.: CV -21-00000673-0000
DATE: 2021-03-19

SUPERIOR COURT OF JUSTICE-ONTARIO

RE: HALTON CONDOMINIUM CORPORATION NO. 77, Applicant

AND:

VILY MITROVIC and ZORAN ZUPANC, Respondents

BEFORE: Gibson J.

COUNSEL: Rodrigo Escayola, David Plotkin and Graeme Macpherson, for the Applicant

Antoine D'Ailly, for the Respondents

HEARD: March 5, 2021

ENDORSEMENT

Overview

[1] This is a case that reflects many of the societal tensions that attend current attempts to protect the residents of Ontario from the potentially deadly effects of the current COVID-19 pandemic. Its focus is the requirement to wear masks in public spaces.

[2] The Applicant Halton Condominium Corporation No. 77 ("HCC77") is a high-rise residential condominium corporation, comprised of 169 units, located at 5250 Lakeshore Road, Burlington, Ontario.

[3] The Respondents Vily Mitrovic and Zoran Zupanc own and occupy unit 1106 ("the Unit") in the Admirals Walk complex at this address.

[4] The Respondents decline to wear a mask while in the common elements of the condominium. They claim exemption from the requirement to wear a mask or face covering in a manner that covers their mouth, nose and chin due to what they say are their respective medical conditions. They also contend that they are not required to provide any proof of such a claim to exemption.

[5] The Applicant contends that the refusal of the Respondents to wear a mask is deliberate and defiant behaviour in breach of the *Reopening Ontario Act* regulations, the municipal by-laws and HCC77's Mask Policy. In support of this it has provided photographs from security cameras appearing to show Ms. Mitrovic not wearing a mask within the common elements of the building, exercising by walking on different floors where her unit is not located while not wearing a mask, wearing an anti-masking sign, and posting anti-masking posters within the building. More importantly, it submits, it puts at risk the health and safety of other occupants, many of whom are elderly and vulnerable.

[6] The Respondents resist the Applicant's characterization of their actions, submit that HCC77's Mask Policy is not consistent with applicable legislation as it does not contain required exemptions as prescribed by the applicable legislation, claim that in any event they qualify for exemption from the general requirement to wear a mask or face covering due to their respective medical conditions, and assert that they are not required to furnish proof of exemption.

[7] The Applicant seeks the following Orders from the Court:

(a) A declaration that the Respondents' behaviours constitute a dangerous activity in breach of s.117 of the *Condominium Act*;

(b) An interlocutory and permanent injunction enjoining the Respondents to:

i. Wear a securely fixed mask or face covering adequately covering their nose, mouth and chin, without gapping, at all times while on common interior elements at HCC77;

ii. Not transit or be on any floors other than the 11th floor, the elevator, the main lobby and mail room and parking garage levels P1 and P2;

iii. Only circulate on any interior common elements for the purpose of ingress and egress, by the most direct route from their unit to the main entrance of the building or to their parking spot at levels P1 and P2;

B98

And this, for as long as HCC77 has in place its mask policy, or any other mask policy, or, alternatively, for as long as a mask or face covering is required under the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020;

iv. Comply with any and all advice, recommendations and instructions of public health officials, including those issued by the Chief Medical Officer of Health of Ontario, or of the Halton Public Health Unit; and,

v. Comply with the Corporation's declaration, by-laws, rules and policies as they pertain to the current COVID pandemic and/or the safety, security and health of HCC77's occupants.

(c) A compliance order pursuant to s.134 of the *Condominium Act* enjoining them to comply with the above, with s.117 of the *Act* and with HCC77's Mask Policy; and

(d) Costs on a full indemnity basis.

[8] The Respondents seek an Order granting the following relief:

(a) A declaration that the Respondents are exempt from wearing a mask or face covering pursuant to s. 4(g) of O/Reg 263/20;

(b) A declaration that the Respondents are exempt from wearing a mask or face covering pursuant to s.11(1) of Burlington's municipal by-law 062-2020 as amended;

(c) A declaration that the Respondents are exempt from wearing a mask or face covering with respect to HCC77's Mask Policy;

(d) A declaration that the Applicant is in breach of the applicable regulations adopted under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*;

(e) A declaration that the Applicant is in breach of the City of Burlington By-Law 62-2020; and,

(f) Costs on a substantial indemnity basis.

Issues

[9] This situation has given rise to strong emotions on both sides. But it is necessary to be clear-eyed and precise about the Court's proper role in this case. It is not to pronounce on ideology, or to give a judicial imprimatur in favour of one perspective or the other. The Court's role in this case does not entail an assessment of the various arguments put forward in the public square in the vigorous debate about the wisdom or necessity of wearing masks as a prophylactic measure to combat the spread of the COVID-19 pandemic. It is not a reference to determine the constitutionality, the legal validity or the wisdom of the Government of Ontario, the Regional Municipality of Halton or the City of Burlington's measures to combat the spread of the COVID-19 virus or to mitigate the effects of the pandemic currently being experienced in Ontario in general, and Halton Region in particular. The creation of legislative responses to the pandemic is the province of elected officials at various levels of government, and its implementation is the responsibility of public health and other officials. Absent a constitutional *Charter* dimension, which has not been advanced or argued in this case, it is not the role of the Court to make declarations about the various legislative instruments engaged in this case. Nor is it the role of the Court to substitute its own judgment for that of public officials in respect of policy or operational decisions.

[10] Rather, the role of the Court in the present case is narrow, and requires judicial restraint: it is to assess, on the particular facts placed in evidence before the Court in this case, in light of the current statutes, regulations, municipal by-laws and HCC77 Mask Policy, the actions of the Applicant HCC77 and the Respondents, and whether the relief sought by HCC77 in its Application is warranted. Distilled to its essence, the question is whether the Respondents should be required to wear a mask or other face covering while in the common areas of the condominium building, notwithstanding that they claim a medical exemption from doing so.

[11] The issues to be determined on this motion are:

(a) Are the Respondents in breach of the *Reopening Ontario Act* mask requirements?;

(b) Is the Respondents' behaviour a dangerous activity prohibited under s.117 of the *Condominium Act*?;

(c) Are the Respondents in breach of HCC77's Mask Policy?;

(d) Should a compliance order be issued to secure the Respondents' compliance pursuant to s. 134 of the *Condominium Act*?; and,

(e) Should an interim and permanent injunction be issued to enjoin the Respondent's behaviour?

Evidence

[12] The Respondents are the owners and occupiers of Unit 1106 in HCC77. In order to access their apartment, they must traverse the common areas of the building, which include the lobby, elevator or stairs, and the hallways.

[13] Ms. Mitrovic, who is 71, has provided evidence for the purpose of this hearing in her affidavit dated March 4, 2021. Attached as an exhibit to her affidavit is a copy of a doctor's note from Dr. Krizaj-Kapljic Davorka dated February 4, 2021, which states that "Mrs. Mitrovic is unable to wear a mask or face shield due to health problems. She will vaccinate for Covid as soon as she can." There is no further explanation in the note as to the nature of Ms. Mitrovic's medical issue, or of any alternatives.

[14] Counsel for the Applicant confirmed in oral submissions that the Applicant does not contest the authenticity of this note, but does contest the veracity of the information provided by Ms. Mitrovic. He urged the Court to look behind the face of the doctor's note and invited the Court to make a negative finding regarding Ms. Mitrovic's credibility. This position seems at least in part to be driven by the Applicant's concern over the social media posts of Ms. Mitrovic expressing skepticism about the legitimacy of the requirement to wear masks, her posting of anti-mask items in the condominium building, and its assertion that many other residents of the condominium building object to Ms. Mitrovic exercising in the hallways on other floors than the one her apartment is located on.

[15] The Applicants urge in their Factum that the wording of the Red Zone Regulations "must be interpreted very narrowly as, if unchecked, it essentially allows unscrupulous individuals to

deliberately flout provincial health and safety regulations, putting at risk the life and health of the rest of the community."

[16] Mr. Zupanc has provided evidence for the purpose of this hearing in his affidavit dated March 4, 2021. He asserts that he is exempt from mask requirements. In this regard, he has not provided a note from a doctor or other medical authority. However, at paras. 8 and 14 of his affidavit, he states that he has a medical condition such that he experiences severe difficulty breathing when his nose is covered, and that he feels like he is going to pass out if he has to wear a mask over his nose for more than a couple of minutes. He does not specify the medical condition, indicate a diagnosis from a medical practitioner, or elaborate what other options might be available to him.

[17] Canada is currently confronted with a grave public health crisis without parallel in recent decades. Courts have taken judicial notice of this in a number of ways:

(a) "There is currently a global pandemic which has resulted in a significant number of deaths and serious illness throughout Canada and the province of Ontario. The virus affects people of all ages and is particularly dangerous to older people and those with certain medical pre-conditions": *Solanki v. Reilly*, 2020 ONSC 8031 at para. 4;

(b) "The fact of the COVID-19 pandemic, its impact on Canadians generally, and the current state of medical knowledge of the virus, including its mode of transmission and recommended methods to avoid its transmission": *R. v. Morgan*, 2020 ONCA 279 at para. 8;

(c) "The fact that COVID-19 is caused by SARS-CoV-2, a communicable and highly contagious virus [and] that people who are infected with the virus can be asymptomatic yet still contagious": *Manzon v. Carruthers*, 2020 ONSC 6511 at para. 18; and,

(d) "The pandemic has wreaked untold death and destruction worldwide; COVID-19 is extremely infectious and can spread rapidly in any location; the main mitigatory steps recommended to "flatten the curve" of infection are i) social distancing, ii)

the wearing of personal protective equipment (PPE), and iii) regular testing of the population:: *R. v. Grant*, 2020 ONSC 3062 at para. 25.

[18] Mindful of the guidance of the Court of Appeal for Ontario recently given in *R. v. J.M.,* 2021 ONCA 150 that the criteria for the proper taking of judicial notice require notoriety or immediate demonstrability, I take judicial notice of the existence of the COVID-19 pandemic in the Province of Ontario, and more particularly in Halton Region, and repeat and adopt the findings of judicial notice referred to in the cases above.

Law

I. Red Zone Regulations

[19] Since November 16, 2020, the Halton Regional Health Unit is a "Stage 2 Area" under "Red (Control)" restrictions. As such, it is subjected to the orders, restrictions and regulations listed in O.Reg. 263/20 ("Red Zone Regulations"). These provide for certain exemptions. The mask requirement does not apply to individuals who fall within certain exceptions, the only applicable ones in this case potentially being: (i) individuals who have a medical condition that inhibits their ability to wear a mask; (ii) those being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act* or (iii) those being reasonably accommodated in accordance with the *Human Rights Code*: O.Reg. 263/20 Sched 1, Art 2(4)(g), (j) and (k).

[20] The Red Zone Regulations provide that "it is not necessary for a person to present evidence to the person responsible for a business or place that they are entitled to any of these exemptions": O.Reg 263/20 Sched 1, Art 2(6).

II. Burlington By-Law 62-2020

[21] The City of Burlington By-Law 62-2020 has been amended several times. It originally came into force on July 20, 2020. It was amended on July 28, 2020, to, *inter alia*, change the age of exempted children from three to five years old. Another amendment came into force on August 20, 2020 to expand the application of the By-Law to include condominiums and apartment buildings. The By-Law was amended a third time on January 19, 2021, so that it would stay in force until December 31, 2021. In its most recent iteration currently in force, it applies to

condominium buildings, and requires Operators of condominiums to ensure that they adopt policies to ensure that no member of the public is permitted entry to, or otherwise remains within, any enclosed space unless the member of the public is wearing a mask or face covering, in a manner which covers their mouth, nose and chin.

[22] The By-law requires Operators to ensure that their policies contain exemptions from the requirement to wear a mask or face covering where, amongst other situations, the person has an underlying medical condition where wearing a mask or face covering would inhibit the person's ability to breathe in any way, or the person may experience a negative impact to their emotional well-being or mental health.

[23] At subsection 11(3) it provides: "Every Owner of an Apartment Building or condominium corporation responsible for a Condominium Building shall not require any person, including employees, to provide proof of any of these exemptions set out in subsection 11.(1)."

[24] The By-Law prescribes at s.12 the text of the wording of signage to be conspicuously posted at all entrances to the Condominium Building, which includes the exemptions mentioned above, as well as the following statement: "please be respectful of the rights of individuals who are exempt from wearing a mask in conformity with the exemptions provided in By-law 62-2020, as amended."

III. HCC77 Mask Policy

[25] On July 22, 2020, HCC77 adopted a Mask Policy, requiring all residents to wear a mask "that covers the nose, mouth and chin, without gapping," while in any enclosed common space such as the lobby, hallways, stairs, garage and elevators. The Mask Policy included an exemption for: children under two years of age; persons with an underlying medical condition which inhibits their ability to wear a mask; persons who are unable to place or remove a mask without assistance; and persons who reasonably needed to be accommodated in accordance with the *Ontario Human Rights Code*. The policy was circulated to all residents and many reminders were sent.

Analysis

[26] It is clear that the wording of the HCC77 Mask Policy is more restrictive than the Burlington By-Law. Rather than the two grounds of exemption at paragraph 11.(1)(iii) of the Burlington By-Law that "the person has an underlying medical condition where wearing a Mask or Face Covering would inhibit the person's ability to breathe in any way," and at paragraph 11.1(1)(iv) that "the person may experience a negative impact to their emotional well-being or mental health," the HCC77 Mask Policy only specifies by way of similar exemption at its paragraph 4(ii) "persons with an underlying medical condition which inhibits their ability to wear a mask."

[27] The HCC77 Mask Policy does not contain an analogue to subsection 11.1(3) of the Burlington By-Law that "Every Owner of an Apartment Building or condominium corporation shall not require any person, including employees, to provide proof of any of the exemptions set out in subsection 11.(1)."

[28] If the Burlington By-Law were the only source of authority for HCC77 to make a mask policy, it is clear that the HCC77 Mask Policy would be overly restrictive in not making provision for the separate ground of exemption of a person experiencing a negative impact to their emotional well-being or mental health, as well as containing no provision about not requiring any person to provide proof of exemption, and would not in compliance with the provisions of the By-Law.

[29] The Applicant submits in effect that, in addition to the provisions of Burlington By-Law 62-2020, as amended, which is cited in the recitals portion of the HCC77 Mask Policy, it has separate sources both of obligation and authority pursuant to the *Condominium Act*, the *Occupational Health and Safety Act*, and the Corporation's governing documents.

[30] The recitals portion of the HCC77 Mask Policy states that the Corporation has the obligation to ensure that its property is reasonably safe pursuant to: s.17(2) of the *Condominium Act, 1998* under which it has a duty to control, manage and administer the common elements of the Corporation; s.26 of the *Condominium Act*, pursuant to which the Corporation is deemed to be the occupier of the common elements for the purpose of determining liability resulting from a breach of its duties as an occupier of land; pursuant to s.117 and s.119 of the *Condominium Act*, under which the Corporation has an obligation to ensure that no person permits a condition to exist or carries on an activity in the common elements that is likely to cause injury to an individual; and

pursuant to the *Occupational Health and Safety Act*, the Corporation has an obligation to maintain a safe and healthy workplace and take all necessary precautions to protect those who work on the Corporation's property.

[31] The Court has to balance the competing rights of the Respondents and the rest of the condominium community. The Applicants submit in their Factum that there is, on the one hand, "a real risk of serious illness or death to the other occupants of the Corporation if asymptomatic but infected individuals are allowed to roam around without a properly worn mask," balanced against "inconvenience" imposed on the Respondents if they must wear a mask. It submits that the "enormous risk that the Respondents' conduct poses to other residents outweighs this minimal impairment."

[32] The Applicant submits that the Respondents' ongoing refusals to wear a mask while on interior common elements during a global and deadly pandemic amounts to a dangerous activity prohibited under s.117 of the *Condominium Act*, which provides:

> 117. No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual.

It submits that "the Respondents are entitled to hold whatever views they wish, no matter how misguided they may be. However, their personal freedom stops where those views manifest themselves in actions and omissions that directly cause harm or could reasonably cause harm to other members of the community." The Applicant submits that the Respondents' ongoing behaviour is incompatible with condominium living during a pandemic and amounts to a dangerous activity under s.117 of the *Condominium Act*.

[33] Compliance Orders are a remedy set out in s.134 of the *Condominium Act*:

> 134(1). Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

[34] The HCC77 Board had authority to make and issue the Mask Policy. In conjunction with s.117 set out above, s.58 of the *Condominium Act* permits a condominium Board to make or amend rules to promote the health, safety and welfare of owners and residents:

> 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, or the corporation.
>
> (2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

[35] Courts have recognized that living in a condominium community is a special context that requires a balancing of interests of those living there. As Stinson J. stated in *Metropolitan Toronto Condominium Corporation No 933 v. Lyn,* 2020 ONSC 196 at paras. 27-30:

> **27** Living in a condominium has been described as living in a small community, where the regulation of the community is more akin to the governance of a town than it is to the governance of a corporation. In *Shaw Cablesystems Ltd. v. Concord Pacific Group Inc.*, 2007 BCSC 1711, at para. 10, Justice Leask of the British Columbia Supreme Court wrote that:
>
> > [Living in a condo] combines many previously developed legal relationships. It is also something new. It may resemble living in a small community in earlier times. The council meeting of a [condo] corporation, while similar in some respects to a corporate annual general meeting, also resembles the town hall meeting of a small community. [Condos] are small communities, with all the benefits and the potential problems that go with living in close collaboration with former strangers.
>
> **28** As with living in any community, condominium owners and their guests must enter a social contract which relinquishes their absolute interests to do as they please with their real property, and instead balance their interests with those of the other owners and tenants. In an early and much-quoted condominium case (*Hidden Harbour Estates, Inc. v. Norman*, 309 So.2d 180 (Fla. 4th DCA 1975) at p. 181-182), a court in Florida described these restrictions to the liberty which an owner of private property otherwise enjoys as follows:
>
> > [I]nherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up

> a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization. The Declaration of Condominium involved herein is replete with examples of the curtailment of individual rights usually associated with the private ownership of property.

29 More recently, in *Ciddio v. York Region Condominium Corp. No. 730*, [2002] O.J. No. 553 (at para. 33), Justice Stong of this court reflected that the *Condominium Act* exists to regulate the smooth interaction between the owners of units seeking to live together in a co-operative lifestyle:

> It is a trite observation that the *Condominium Act* exists to make for smooth interaction between the owners of units in a condominium project. Such a project is based on a co-operative life style, and the *Act* sets out procedures designed to assure that owner's concerns are addressed. No one owner can run amok or impose his designs unilaterally on an unwary or ill informed ownership.

30 To summarize the foregoing principles, where someone chooses to live in a condominium community - whether as an owner or a tenant - they do not enjoy unlimited freedom to do as they please. Rather, they must conduct themselves in accordance with the rules of the community and with due respect and consideration for their neighbours and fellow residents. Further, they must govern and limit their personal activities taking into account the impact of those activities upon other residents, as regulated by the condominium rules. Examples of limits that govern all residents include refraining from playing loud music or television shows or otherwise creating noise that may disturb fellow residents during times in the late evening and night when most residents would be expected to be enjoying peace and quiet and be resting or asleep.

[36] In a recent case where an owner challenged a policy preventing non-essential work in condominium units during the pandemic, *Toronto Standard Condominium Corporation 1704 v. Fraser*, 2020 ONSC 5430, the Court held at paras. 19-20 that the enactment of health-related policies during the COVID-19 pandemic is an appropriate exercise of the Corporation's authority:

> I conclude that the Policy was well within the range of reasonable responses to the global pandemic. The Court of Appeal stated in *Dvorchik*, at para. 6, "The threshold for overturning a board's rules reasonably made in the interests of unit owners is a high one." In May of 2020, the Corporation gave notice of the Policy to all unit-holders of its decision to limit access to the building from contractors as part of its measures against COVID-19, both to reduce the potential spread of the virus, and to respond to the fact that many residents needed to work from home. The Board implemented the Policy after educating itself on health and safety responses in condominiums and reviewing public health information. The Policy was repeated and explained in greater detail in July to all residents. The context of the Policy is the unprecedented societal response to a virus which is contagious and fatal to those in high-risk categories…

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[37] Condominium corporations indeed constitute a form of micro-community, in which the residents partake in a form of social contract. As with living in any community, condominium owners and their guests must enter a social contract which relinquishes their absolute interests to do as they please with their real property, and instead balance their interests with those of the other owners and tenants. Condominium corporations are mandated to be self-regulated. Condominium boards have a duty to control, manage and administer their community. In doing so, they may make rules and policies that are more restrictive than the general law applicable to all persons and premises in the province or in a particular municipality by operation of provincial statutes or regulations, or municipal by-laws: for example, restricting the sorts of pets that residents may keep, or restricting the access of contractors to do non-essential work during the pandemic, as in *TSCC 1704 v. Fraser, supra*.

[38] The efforts of the HCC77 board to develop and promulgate a mask policy were not only reasonable, but necessary in the circumstances. But, in respect of the interplay between provincial and municipal legislation and condominium policy, a condominium board may not promulgate policies that are contrary to law of general application in the province or municipality. They may make policies that are more restrictive in areas where the law of general application has not already occupied the field, but they cannot be inconsistent.

[39] The Applicant in this case is, rightly, concerned about the risk of serious illness or death to which members of the condominium community may be exposed by persons who do not wear masks in the common elements. This is their home. In many, if not most, instances, they have nowhere else to go.

[40] The Respondents submit that they ought not to be subject to what they describe as a callous and unreasonable adherence to a draconian policy. The building is also their home.

[41] The Respondents have a substantial, although not absolute or unbounded, right to privacy in respect of their medical information.

[42] As submitted by the parties, in this case the Court is called upon to balance competing rights. The issues are complex and profound. There is some merit to the argument of both sides.

It is a difficult balancing act. It is not one susceptible to being reduced to simplistic analysis aligned with partisan positions in which each side seeks to caricature the other side in the debate.

[43] The law of general application in this instance (Red Zone Regulations and Burlington By-Law 62-2020), provide for certain exemptions to the requirement to wear a mask, and stipulate that no one is to be required to provide proof of the legitimacy of their exemption. As I stated at the outset, this is a policy decision which has been made and enacted by elected officials in the Province of Ontario, the Region of Halton, and the City of Burlington, in seeking to balance competing considerations. It is not my role in this case to opine on the wisdom or scope of those policy choices, and I do not do so.

[44] The Respondents in this case have provided evidence by way of affidavit that they will experience distress if required to wear a mask. The Applicant rightly protests that their evidence in this regard is very thin. However, the law of general application in this case does not require the Respondents to further substantiate their assertions. In these circumstances, I make no findings as to the credibility of their assertions. Even if I were inclined to do so, there is no evidentiary basis in medical terms before me to gainsay the veracity of their health claims, notwithstanding their partisan activities to promote their particular ideological beliefs in respect of vaccinations and the wearing of masks, however selfish, misguided or misplaced these may be.

[45] On the other hand, the HCC77 Board has the right, and indeed the obligation, to insist upon conduct by residents that does not place the other residents at undue risk. No person is an island. To echo the words of Justice Stinson, where someone chooses to live in a condominium community – whether as an owner or a tenant – they do not enjoy unlimited freedom to do as they please. Rather, they must conduct themselves in accordance with the rules of the community and with due respect and consideration for their neighbours and fellow residents. Further, they must govern and limit their personal activities taking into account the impact of those activities upon other residents, as regulated by the condominium rules.

[46] This necessity is particularly acute in the context of the current pandemic, where not wearing a mask may potentially have serious or deadly consequences for one's neighbours.

[47] As stated, in this case the Court is required to balance competing rights. Its decision must be tailored to the particular circumstances of this case. The Respondents live in the Admiral's Walk complex. It is their home. They must transit through the common elements to enter and exit the building. This is just a simple factual reality.

[48] However, they do not have to wander other floors in the building without wearing a mask for exercise, to visit other residents, for social activities or to post posters in support of their anti-mask beliefs.

[49] The Court will not make an Order in the face of the Respondents' claim for an exemption for health reasons requiring the Respondents to wear a mask or other face covering while in the common elements of the building while transiting for the purpose of ingress and egress, by the most direct route from their unit to the main entrance of the building, or to their parking spot at levels P1 and P2.

[50] However, the Court will make a declaration that any behaviour by the Respondents in exercising on or visiting other floors of the building other than the one their unit is located on, while not wearing a mask or face covering, would constitute a dangerous activity in breach of s.117 of the *Condominium Act*. Such selfish acts of individual defiance in the face of an ongoing pandemic have direct and potentially dire consequences for their neighbours. A compliance order pursuant to s.134 of the *Condominium Act,* and a permanent injunction pursuant to s.101 of the *Courts of Justice Act,* will issue enjoining them to comply with this.

Order

[51] The Court Orders that:

1. The temporary Order made in my Endorsement of March 2, 2021, and continued in my Endorsement of March 5, 2021, is vacated;

2. The Respondents Vily Mitrovic and Zoran Zupanc, for as long as HCC77 has in place its Mask Policy, or any other mask policy, or for as long as a mask or face covering is required under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, or by Burlington By-Law 62-2020, shall not transit or be on any floors other

than the 11th Floor, the elevator, the main lobby and mail room and parking garage levels P1 and P2 of the HCC77 building at 5250 Lakeshore Road, Burlington, Ontario, without wearing a securely fixed mask or face covering adequately covering their nose, mouth and chin, without gapping; and,

3. The Respondents may only circulate on any interior common elements without a mask or face covering for the purpose of ingress and egress, by the most direct route from their unit to the main entrance of the building or to their parking spot at levels P1 and P2.

[52] In the present circumstances of the COVID-19 pandemic, this Endorsement is deemed to be an Order of the Court that is operative and enforceable in its present form, without a formal typed Order. Approval of the form and content of this Order by the Respondents is dispensed with.

Costs

[53] As success is divided, there will be no Order as to costs.

_____

M. Gibson J.

Date: March 19, 2021

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TAB 9

Order under Section 31
Residential Tenancies Act, 2006

File Number: TST-55210-14

G.G (the 'Tenant') applied for an order determining that T.CH.C (the 'Landlord') or the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.

This application was heard in Toronto on September 23, 2014.

The Tenant and the Landlord attended the hearing. The Landlord was represented by J.K. called as a witness B.P (the 'Landlord's Witness').

Determinations:

Introduction

1. By way of background, this application concerns a residential complex which houses low-income seniors. The Landlord's Witness is the Operating Manager Seniors and S.H.T.W. The Tenant self-identifies as a black man with dual citizenship who has served in the U.S.M.C.

2. The Tenant's application specifically concerns the behaviour of another tenant in the residential complex who is 84 years old. For the purposes of this order I refer to this other tenant as Mr. H. The Tenant believes that Mr. H is suffering from dementia and needs more supports than are available in the residential complex. He says that he brings this application in an effort to get the Landlord to see that Mr. H needs alternative housing and additional support services.

Preliminary Issue

3. At the beginning of the hearing I raised a preliminary issue with respect to the Board's jurisdiction because the application refers to a number of incidents that occurred more than one year prior to the date the application was filed with the Board.

4. Subsection 29(2) of the *Residential Tenancies Act,* 2006 (the 'Act') says that no application like this one can be brought more than one year after the day the alleged conduct giving rise to the application occurred. This application was filed on August 21, 2014. After discussing this issue with the parties it was agreed that of the incidents listed in the application the Board only has the jurisdiction to deal with three. Those incidents occurred on September 22, 2013, March 1, 2014 and August 16, 2014.

Findings of Fact

5. Prior to the incidents complained of over which the Board has jurisdiction the Tenant and Mr. H came into contact in the residential complex and some conflict occurred. The

Tenant says that on one particular occasion Mr. H assaulted the Tenant; apparently Mr. H made threatening gestures towards him in the elevator and the police became involved. No charges were laid; neither the Tenant nor Mr. H sought or obtained a peace bond. The police told the Tenant and Mr. H to stay away from each other. As this alleged incident is outside the Board's jurisdiction I only repeat it here because it resulted in the Tenant having a strong, fixed, and relevant belief that he should make every effort to stay away from Mr. H and that Mr. H should make an equal effort to avoid him.

6. Also prior to the period over which I have jurisdiction the Tenant says he observed Mr. H on a number of occasions in common areas in the residential complex banging furniture, yelling and swearing. I believe it is this alleged behaviour as well as the alleged incident that occurred in the elevator described above that caused the Tenant to come to the conclusion that Mr. H suffers from dementia.

7. The first incident I have jurisdiction over occurred on September 22, 2013. The Landlord led no evidence to refute the Tenant's testimony as to what happened that day so I accept the Tenant's description of the incident in its entirety.

8. On that day the Tenant was in the recreation room at the residential complex practicing playing his trumpet alone. The recreational room is a very large room with a stage area at the opposite end of the room from the entrance. The doorway leading into the recreation room is a fire door and is supposed to be kept closed at all times. The Tenant says Mr. H entered the recreation room, propped open the door, and then turned around and left but failed to close the fire door behind him. The Tenant then left the stage area where he was practising in order to close the door again. The Tenant says he has a disability which causes him pain on walking.

9. On September 27, 2013 the Tenant wrote a letter to the Mayor's Office at City Hall which refers to this incident although the letter was also about other things. The Tenant says he provided a copy of this letter to the Landlord via e-mail which he does as a matter of routine. It says in part:

> Recently, on September 22, 2013 at approx. 7:15PM, there was another incident Involving [Mr. H]. He entered the recreation room, opened the door and left. The door is also a fire door and should be closed at all times and is controlled with an access card for residents only. There is valuable electronic fitness equipment that could be stolen or vandalized.
>
> Previously, I have contacted [the Landlord] with these complaints, along with Toronto Police and T.H.S. The Management at [the Landlord] has been unable to stop his harassing behaviour as outlined in the emails below. The harassment continues, and I fear it can lead to an altercation. I am not a doctor, but can repeat what a Support Worker has told me that many elderly residents suffer from senility – dementia from old age. I attempt to avoid [Mr. H] because his behaviour is annoying, disturbing and unpredictable. I speak to his behaviour, not his mental health.

> **I ask that your Office contact [the Landlord] to make sure [Mr. H] is interviewed, assessed, and is made aware of his responsibilities via the lease.** Moreover, the V.P. of Operations for [the Landlord]… sat down with this tenant and others to ask them to be respectful and not engage in abusive behavior.
>
> [Emphasis in original.]

10. The e-mails referred to in this letter were not attached to the letter or filed into evidence.

11. The Landlord's Witness started in his current position on September 25, 2013 so he was not personally involved with addressing the incident of September 22, 2013. He could not say whether the Landlord received this letter or not but does say that he has spoken to the Tenant about Mr. H more than once and received a number of communications from the Tenant about him. What he says the Landlord has done in response to the Tenant's concerns is addressed more fully below. Given the Landlord's evidence in this regard I accept the Tenant's testimony that he sent a copy of this letter to the Landlord.

12. The second incident complained of occurred on March 1, 2014.

13. On March 1, 2014 the Tenant was again practising his trumpet in a common area in the residential complex. This time however, he was in the library and not the recreation room because the recreation room was occupied. The library is quite small. The Tenant says that there is a problem with the library door and if closed can get stuck and people get trapped inside. As a result the Tenant leaves the door ajar when using the library room.

14. The Tenant says that he was able to see Mr. H approach the library that day. He was near the door. Mr. H was carrying a plate of food in his hands. The Tenant states he shouted to Mr. H that the police had said they were to stay apart and Mr. H should take his food upstairs to eat. Mr. H proceeded to attempt to enter the library. The Tenant says he was afraid Mr. H would close the library door and trap them both inside so the Tenant kept one hand on the door and one hand on his trumpet. Mr. H then stumbled and dropped the food on the floor. He then left.

15. The Tenant was asked on cross-examination to confirm that Mr. H dropped the food on the floor because the Tenant obstructed his access to the library. The Tenant objected to the word obstruction so I asked the Tenant if he thinks Mr. H would not have dropped the food but for the fact that the Tenant was holding the library door and he answered that Mr. H probably would not have dropped the food but instead there would have been an altercation because Mr. H would have annoyed the Tenant.

16. The Tenant entered into evidence three photographs taken with respect to the March 1, 2014 incident. One photograph shows a plate and spilled food on the floor. The other two show Mr. H. In them he is dressed in outer wear. One shows Mr. H holding his hat in one hand; he is looking at the camera and appears to be holding his other hand in front of his face. The last photograph shows him walking away through the library door.

17. The Tenant then sent an e-mail to the Landlord about this incident which says in part:

> [Mr. H] appears incapable of following simple instructions to behave in an orderly manner and not to engage… I need to protect my tenancy and person…
>
> [The Landlord] must remove [Mr. H] from the Building, so as to assure my peaceful enjoyment of the premises, but more importantly that [Mr. H] is given the care he requires.

18. The Landlord's Witness says that in response to this incident, as with previous ones, the Landlord's staff investigated by speaking to Mr. H about what happened. With respect to the March 1, 2014 incident the Landlord formed the opinion that it was the Tenant who behaved inappropriately by trying to prevent Mr. H from entering a common area. Mr. H did not ask the Landlord to do anything about this incident; rather his position is that he simply wants the Tenant to leave him alone.

19. The third incident the Tenant complains of occurred on August 16, 2014.

20. The Tenant's evidence with respect to what occurred on August 16, 2014 is consistent with the note he sent the Landlord via e-mail about it afterward. That note says in part:

> At approx.. 6:52PM on Saturday, August 16, 2014, in the Library room, [Mr. H] attempted to enter the room while I was in it. I immediately approached the door… because if closed it would not open. [Mr. H] moved backwards quickly, and stumbled to the ground. I did not touch him, but he may have hit his head as he fell? He was on the ground, but I could not help him. He would accuse me of an assault, if my hands were put on him? The Police had previously advised us to stay apart. I returned to my dwelling and called [the Landlord].

21. In response to my questions about this incident the Tenant stated that after Mr. H fell backward Mr. H was yelling for help to get up and swearing at the Tenant. Other people in the area asked the Tenant why he was not helping Mr. H get up. He was afraid to do so as he was concerned it might result in wrongful accusations of assault so he left the scene while Mr. H was still on the ground.

22. Immediately after returning to his rental unit the Tenant called the Landlord and two special constables were dispatched. The Landlord entered into evidence their report of the incident. That report is consistent with the Tenant's evidence. It indicates the special constables attempted to locate Mr. H to interview him but were unable to do so and it was possible an ambulance had been called but they did not confirm that. The Tenant says that when he spoke with the special constables he asked them to locate Mr. H and check if he was okay as the Tenant was concerned he might have hit his head and injured himself. The Tenant believes Mr. H was in fact uninjured because he saw him not long after walking around the residential complex.

23. The Tenant and the Landlord's Witness subsequently spoke over the telephone and via e-mail concerning the incident of August 16, 2014. At the hearing before me the Tenant initially stated that during his phone call with the Landlord's Witness, he was told they

planned to reassign or move Mr. H. This is actually not the case; rather, the Tenant asked the Landlord's Witness to relocate Mr. H and he was told the Landlord would investigate and speak to Mr. H and there was a process in place that the Landlord would follow. However, for privacy reasons the Landlord was not prepared to provide any details with respect to the specific steps it was taking to manage the tenancy of Mr. H. The Landlord's Witness says that the Tenant is adamant that Mr. H be removed from the residential complex.

24. After this phone conversation the Tenant sent the Landlord's Witness an e-mail which says in part:

> Opening the recreation doors and walking away, the fire doors and access control doors that should remain closed, and leaving me to have to close these doors is a nuisance; but when the abuse becomes physical in nature, it becomes more serious, criminal and injurious.
>
> Time is of the essence. [Mr. H] may accost me as I go pick up the mail today. Then trip and fall to the ground, and crack his skull? **An** *(sic)* **blame me.** That is what I am trying to avoid?
>
> [Emphasis in original.]

25. Again the Landlord's Witness says the Landlord investigated this third incident and spoke with Mr. H. The Landlord came to the conclusion that Mr. H would not have fallen down but for the Tenant's behaviour and that the Tenant was acting improperly by blocking Mr. H's access to the library. But again Mr. H wants nothing to do with the Tenant and just wants to be left alone.

26. The Landlord attempted to connect Mr. H with a community support program but Mr. H declined assistance. I asked the Landlord's Witness if the Landlord had offered tenant mediation services to the Tenant and Mr. H and he replied that it had not because Mr. H does not want anything to do with the Tenant and mediation is voluntary. I also asked if the Landlord had considered transferring the Tenant and the Landlord's Witness said it had not because the Tenant is well aware of the transfer policy and has not requested relocation.

27. The Tenant entered into evidence photographs of Mr. H he has taken since the application was filed. They show Mr. H using various common areas of the building. The Tenant says that sometimes he will be in a common area and Mr. H will enter and nothing at all will happen. He also says that when the Tenant sees Mr. H in a common area he will avoid him and not enter the common area if Mr. H is there first.

Legal Analysis

28. This application is based on the rights set out in section 22 of the Act. It says:

> A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed

substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

29. There are a number of general observations I would make about the law with respect to this provision.

30. First, and as I explained at the hearing, this provision talks about the Landlord's behaviour, not about the behaviour of other tenants in a residential complex. However case law with respect to this section indicates that a landlord may be held liable for the behaviour of another tenant if the landlord fails to respond reasonably to complaints about that behaviour.

31. Second, whether or not the Landlord's response will be considered to be reasonable depends in part on the nature of the behaviour complained of. For example, if the behaviour complained of presents a very serious risk of harm to the complaining tenant or is otherwise egregious the response should be more serious than if the complaint concerns something less serious in nature. For example if one tenant chases another down a common hallway with an axe that conduct is so serious that it would probably be unreasonable for the landlord to do anything short of serving notice of termination on the offending tenant. If the complaint is that a neighbour is being noisy, a first complaint will usually be reasonably addressed by the Landlord having an oral conversation with the offending tenant or sending a simple reminder that noise carries and tenants should be considerate of one another.

32. Third, section 22 uses the word "substantial" to qualify the kind of interferences covered and the word "reasonable" in terms of the impact on the complaining tenant of the behaviour complained of. This means that a landlord will not normally be held liable under s. 22 for mere annoyances or with respect to trivial incidents. It also means that although the behaviour complained of may be particularly annoying to the complaining tenant involved, the standard the Board must apply is not that of the particular tenant before the Board but rather that of the reasonable tenant in similar circumstances.

33. Applying these principles to the evidence before me I am not satisfied that the Landlord has breached s. 22 of the Act by failing to respond reasonably to the Tenant's complaints. I say this for a number of reasons.

34. First, the behaviour the Tenant complains of is in the nature of minor annoyances.

35. On September 22, 2013, a door was left open and he had to get up to close it. On March 1, 2014 another resident wanted to use the library to consume food (which admittedly is an improper use); and the Tenant anticipated something which did not actually happen – namely, he was concerned he would get trapped in the library if Mr. H entered and closed the door. On August 16, 2014 the behaviour complained of is again that another tenant wanted to enter a common area – which I note he is entitled to do – and the Tenant anticipated the same problem might occur with respect to getting trapped by the door if it were to be closed.

36. Second the Tenant seems to wish the Board to apply his personal and subjective standard with respect to the Landlord's behaviour rather than the reasonable tenant standard required by s. 22.

37. Although the Tenant did not explicitly say this I believe the Tenant considers Mr. H's behaviour to be serious because of the fear that was engendered in him when the police cautioned both Mr. H and the Tenant to stay away from each other. He seems to believe that this caution has weight akin to an order of the Court. From his perspective he must stay away from Mr. H and he tries hard to do so; as a result he does not understand why Mr. H should not be expected to try equally hard to avoid entering common areas which the Tenant is using. The Tenant expresses the view that Mr. H is simply incapable of understanding the police instruction because in his opinion Mr. H is suffering from dementia.

38. But the police caution was a mere verbal advisement and not some sort of Court order that must be obeyed or negative consequences will flow. The police want parties who do not get along to keep away from each other to avoid threats being exchanged and to prevent assaults from happening. They are not interested in peaceable use of common areas nor do they have the authority to order tenants not to use common areas just because someone they do not get along with is there first. If there were mutual peace bonds in place with respect to the Tenant and Mr. H, the Tenant's interpretation as to how the two should avoid any contact might be reasonable but no such peace bonds exist. Absent such mutual peace bonds a reasonable tenant would not believe that Mr. H should not enter common areas if the Tenant is there first.

39. I would also observe that much of the impact the Tenant complains of is anticipatory fear of things that might have occurred but did not actually occur during any of the incidents over which I have jurisdiction. Fear of things that might happen but do not is common to all of us but that does not make it a reasonable standard in law.

40. Third, the Landlord has not ignored the Tenant's complaints. Rather it has investigated them and interviewed Mr. H. As a result of its investigations with respect to each incident the Landlord has concluded the behaviour complained of is either too trivial to warrant taking any action (the September 22, 2013 incident) or the Tenant's fault (the incidents of March 1 and August 16, 2014). Given all of the evidence before me these conclusions on the part of the Landlord cannot be said to be so unreasonable that the Landlord's failure to do anything beyond investigate constitutes substantial interference with the Tenant's reasonable enjoyment.

41. Leaving a door open that should be kept closed is such a trivial incident that at most all the Act would require is for the Landlord to have a casual conversation with the offending tenant. The same is true with respect to eating in a common area where food is not allowed. Because Mr. H has every right to enter and use a common area even if the Tenant is there first it was not unreasonable for the Landlord to conclude that the incidents of March 1 and August 16, 2014 were precipitated by the Tenant's behaviour and Mr. H did nothing whatsoever wrong.

42. Given all of the above I am not satisfied that the Landlord has substantially breached the Tenant's reasonable enjoyment in contravention of s. 22 of the Act. Therefore the Tenant's application must be dismissed.

43. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenant's application is dismissed.

September 25, 2014
Date Issued

Ruth Carey
Member, Landlord and Tenant Board

Toronto South-RO
79 St. Clair Avenue East, Suite 212, 2nd Floor
Toronto ON M4T1M6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

B121

TAB 10

B122

COURT FILE NO.: 04-212DV
Hamilton
DATE: 2005XXXX

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

JUSTICES STAYSHYN, MATLOW, BELLEGHEM

B E T W E E N:	)	
STANBAR PROPERTIES LIMITED	)	
Appellant	)	Margaret Waddell, for the Appellant
- and -	)	
JOSEPH ROOKE	)	
Respondent	)	Respondent in person
	)	**HEARD:** September 22, 2005

MATLOW J

[1] At the conclusion of the hearing of this appeal, we ordered that this appeal from the order of the Ontario Rental Housing Tribunal ("the Tribunal") dated August 31, 2004, be allowed and that the Tribunal's order dismissing the appellant's application for an order terminating the respondent's tenancy be set aside. As well, we gave effect to an arrangement between the parties, made by them, on consent, that would allow the

respondent's tenancy to continue if certain conditions were met by him. We also stated that written reasons would be delivered and what follows are those reasons.

[2] Our jurisdiction on this appeal is confined by section 196 (1) of the Tenant Protection Act, 1997, ("the Act") to questions of law. It is submitted by counsel for the appellant, and not disputed by the respondent, that the standard of review with respect to the issues in this appeal is that of correctness. I agree with that.

[3] Section 196 (3) of the Act gave the Tribunal the right to be heard at the hearing of this appeal. However, we were advised by counsel for the appellant that she had been notified that the Tribunal had decided not to participate.

[4] The principal issues in this appeal arise in the context of the following facts. The parties entered into a written tenancy agreement by which the respondent, as tenant, occupied certain premises owned by the appellant. The agreement included a provision which required the respondent to make arrangements with his own bank for the payment of his monthly rent "by pre-authorized direct debit as required by the Landlord". As well, the agreement included a provision which required the respondent to maintain insurance coverage with respect to certain perils for the protection of the appellant and to provide proof of the insurance coverage to the appellant upon request.

[5] Despite the fact that the appellant required the respondent to make the necessary arrangements for pre-authorized direct debit and requested proof of the insurance coverage, the respondent refused to comply with either. It was evident that the respondent's refusals were, for him, acts of principle. The appellant acknowledged that, in all other requests, the respondent compiled with the tenancy agreement and was a satisfactory tenant.

[6] Because this confrontation between the parties was of importance to the appellant too, it sought to have the issues raised determined in accordance with law. Accordingly, it gave notice to the respondent of termination of the tenancy pursuant to section 64 (1) of the Act and subsequently applied to the Tribunal for an order terminating the tenancy.

[7] Section 64 (1) of the Act provides as follows:

> **64. (1)** A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

[8] In its decision, the Tribunal made the following findings and determinations:

1. Section 119 of the Act forbids landlords from requiring tenants to provide post-dated cheques or other negotiable instruments for payment of rent. Pre-authorized debit is a form of negotiable instrument and, therefore, may fall within the scope of this provision. However, if the parties agree to it, it then becomes a contractual issue which the landlord can seek to enforce in a court of competent jurisdiction.

2. The Act is silent about whether or not a landlord has the right to demand that tenants maintain insurance or that they provide proof of coverage to their landlords. However, if the parties agree to it, it too becomes a contractual issue which can be determined only by a court of competent jurisdiction.

3. Accordingly, the Tribunal does not have jurisdiction to deal with matters that are not provided for by the Act. Breaches of contractual obligations do not fall under the jurisdiction of the Act.

4. "A breach of a covenant in a residential tenancy does not permit termination of the tenancy unless the conduct involved is a ground for termination according to the Act. Proof of insurance and payment by pre-authorized debit are not grounds for termination under the Act even though the Landlord had argued that it fell under a substantial interference provided for under s. 64 (1) of the Act".

[9] It is my respectful view that the Tribunal erred in regarding pre-authorized direct debit as "a form of negotiable instrument". It is neither negotiable nor an instrument and its use is not prohibited by section 119 of the Act.

[10] As well, it is my respectful view that the Tribunal erred in declining jurisdiction. The refusals of the respondent to arrange for pre-authorized direct debit and to provide proof of insurance coverage were in breach of consensual provisions of the tenancy agreement to which he was a party and, in the language of section 64 (1) of the Act, his refusals substantially interfered with the appellant's lawful rights acquired by it as a result of the agreement. Accordingly, the Act authorized the appellant to give notice of termination of the respondent's tenancy and, subsequently, to apply to the Tribunal.

[11] This interpretation of the Act is in accordance with the language of the Act and reflects the very wide jurisdiction which the Legislature has conferred on the Tribunal, particularly with respect to matters relating to the obligations of landlords and tenants and security of tenure.

[12] I am persuaded, therefore, that the Tribunal did have jurisdiction to grant the order sought and that it erred in holding that it did not.

MATLOW J.

STAYSHYN J.

BELLEGHEM J.

Released:

B126

COURT FILE NO.: 04-212DV
Hamilton
DATE: 20051011

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

JUSTICES STAYSHYN, MATLOW, BELLEGHEM

B E T W E E N:

STANBAR PROPERTIES LIMITED v JOSEPH ROOKE

REASONS FOR JUDGMENT

MATLOW J

Released: November 9, 2005

B126

TAB 11

B128

CITATION: York Condominium Corp No 163 v Robinson, 2017 ONSC 2419
COURT FILE NO.: CV-16-565154
DATE: 20170419

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: York Condominium Corporation No 163, Applicant

– and –

Dianne Robinson, Respondent

BEFORE: EM Morgan J.

COUNSEL: *Patrick Greco and Kate Genest*, for the Applicant

Richard Hoffman, for the Respondent

HEARD: April 13, 2017

ENDORSEMENT

[1] The Applicant is a condominium corporation located at 914-920 Yonge Street in Toronto. The Respondent is a resident and owner of a unit in the condominium building.

[2] As counsel for the Applicant put it, the Respondent is deeply concerned about the governance of the condominium corporation, the maintenance of the building, the staff of the management office, etc. She is so concerned that she emails the management office virtually every day asking for various records kept by the building management, critiquing the effectiveness of management, and complaining about building maintenance. Indeed, so concerned is she that in order to ensure she gets staff's attention, she calls them degrading names – "obscenely obese", "massive hulk", "tubbo", are some of the ways she addresses the people that work in her building.

[3] I can only imagine how oppressive it is for the employees of the Applicant. They have tried to be patient, and have developed a protocol with the Respondent that she limit her communications to email correspondence. They have asked her to refrain from coming into the office and verbally abusing them the way she did in previous years. This has worked to a certain extent, but it cannot be easy to be in the position of the Applicant's employees. They come to their place of employment day after day and find correspondence in their inbox that engages in insult, body shaming, name calling, and other types of coarse language and rudeness.

[4] Counsel for the Respondent submits that his client is a habitual email writer. He agrees that she is also a complainer. He points out, however, that as a resident of the building she has a right to complain. Not only that, but some of her complaints are valid. She has complained about the hot water in the building being turned off for extended periods of time, about doorways that are broken and will not close, and other matters that the Applicant concedes need to be attended to.

[5] Because of this situation, management of the building does not want to ignore the Respondent's emails. She often brings important maintenance issues to their attention. Thus, although it is possible to ignore a person's emails by simply deleting them without opening and reading them, management is not anxious to do that. They do want to know what the Respondent has to say.

[6] The problem is that the Respondent has somehow formed the view that she should express herself by calling the office manager and other employees in the building degrading epithets and labels. She also frequently copies the president of the Applicant – effectively, the staff's boss – on her insulting and offensive emails, which often contain personal criticisms and name calling directed at the office manager and other employees in the building.

[7] The Respondent is also in the habit of communicating her concerns about the building by complaining about one staff member to another. In one recent incident, she approached a building superintendent about a problem with the elevator, and took the opportunity to opine that the office manager "should do more than sit down at her desk eating all day as the fat woman she is."

[8] I feel obliged to add that the Respondent has sought no remedies in respect of the records she has requested be disclosed or in respect of any alleged mismanagement of the building. As counsel for the Applicant puts it, her correspondence is simply "directed, ongoing harassment."

[9] It is the Applicant's position that that this is not a situation that its office staff should have to endure at their workplace. In that, the Applicant is correct. Although no allegation of violence or physical abuse is leveled at the Respondent, her daily verbal barrage has made work life intolerable for the Applicant's staff – in particular for the Applicant's office manager at whom much of the Respondent's venom appears to be aimed.

[10] Section 117 of the *Condominium Act*, *1998*, SO 1998, c 19, provides that, "No person shall…carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual." The phrase "injury to an individual" has previously been interpreted to include psychological harm, *Metropolitan Toronto Condominium Corporation 747 v Korolekh*, 2010 ONSC 4448, at para 71, and has been applied to verbal and written forms of abuse: *Carleton Condominium Corporation No 291 v Weeks*, 2003 CarswellOnt 1013, at paras 25-34.

[11] Moreover, Article K of Applicant's own rules governing all residents states that, no "immoral, improper, offensive, or unlawful use shall be made of any unit or of the Condominium property." Having established these rules for all condominium owners, the Applicant should be

able to expect all residents and unit owners, including the Respondent, to abide by them. Indeed, the Applicant is obliged to all of the other owners and residents to enforce the rules against an offending resident or owner: *Metropolitan Toronto Condominium Corporation No 850 v Oikle*, 1994 CarswellOnt 763, at para 8.

[12] It is also worth noting that the staff of the Applicant who are the targets of the Respondent's verbal abuse are workers, and the Respondent's conduct falls within the ambit of workplace harassment. This term is defined in section 1 (1) of the *Occupational Health and Safety Act*, *1990*, RSO 1990, c O.1, as "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome." A condominium unit owner's harassing language has been held to constitute workplace harassment when leveled at the staff of a condominium building: *Toronto Standard Condominium Corporation No 2395 v Wong*, 2016 ONSC 8000, at paras 36, 39-41.

[13] It is readily apparent from the affidavits filed in support of the Applicant's position that the Respondent's vituperative correspondence is indeed unwelcome. Subsections 32.0.7 (1) (a)-(d) of the *Occupational Health and Safety Act* provide that the Applicant is under a legal duty to investigate and protect its workers from workplace harassment, and to remedy the situation by implementing and enforcing appropriate anti-harassment policies.

[14] Likewise, the Applicant has a duty under section 17(3) of the *Condominium Act* 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." The present Application is just such a step, reasonably designed by the Applicant to enforce the condominium rules and to protect its workers from harassment.

[15] Again, counsel for the Applicant points out that the Applicant is not seeking to silence the Respondent or to create a situation in which she is unable to articulate her criticisms and complaints about the building. They are merely trying to get her to communicate in a civil, non-harassing manner.

[16] Under these circumstances of antisocial, degrading and harassing communications aimed at the Applicant's employees, a legal remedy is appropriate. The Respondent's conduct demands an order directing her as unit owner and resident of the condominium to control her behavior and her manner of communicating with the employees and representatives of the Applicant: *York Condominium Corporation No 136 v Roth*, 2006 CarswellOnt 5129, at paras 2-3, 21.

[17] Accordingly, the Respondent shall cease and desist from uncivil or illegal conduct that violates the *Condominium Act* or Rules of the Applicant. The Respondent shall also refrain from verbally or in writing abusing, harassing, threatening, or intimidating any employee or representative of the Applicant, and shall comply with section 117 of the *Condominium Act* by ceasing to conduct herself in a way that is likely to cause injury to an employee or representative of the Applicant.

[18] The Applicant deserves its costs of this Application. Both sets of counsel have submitted their Costs Outlines. Counsel for the Applicant seeks just over $20,000 on a partial indemnity

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basis, while counsel for the Respondent would seek just over $13,500. Both figures are reasonable given the nature of the Application.

[19] Under section 131 of the *Courts of Justice Act*, costs are discretionary. That discretion is generally exercised in accordance with the factors specified in Rule 57.01 of the *Rules of Civil Procedure.*

[20] Of particular relevance is the direction that costs conform with "the amount of costs than an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed": Rule 57.01(1)(0.b). I will exercise my discretion to reduce the amount going to the Applicant to bring it a bit closer to what the Respondent herself was requesting. In that way, it will be more certain that she would reasonably expect to pay the amount that the Applicant has been awarded.

[21] The Respondent shall pay the Applicant costs in the amount of $15,000, all inclusive.

Morgan J.

Date: April 19, 2017

TAB 12

Landlord and Tenant Board
Ontario

130
B133

Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-04767-19

In the matter of: 114, 2531 LAKESHORE BOULEVARD WEST
TORONTO ON M8V1E7

Between: Capreit — Landlord

and

Natasha Vaney — Tenant

I hereby certify this is a true copy of the Order (Name of Document)
DB (Signature of Staff Member)
JUL 22 2019
Landlord and Tenant Board

Capreit (the 'Landlord') applied for an order to terminate the tenancy and evict Natasha Vaney (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard in Toronto on June 11, 2019.

The Landlord's counsel, M. Melchers, attended the hearing. The Landlord called its paralegal, G. Queresma, and its Site Manager, Caroline Wu, as witnesses.

Determinations:

1. Since October 2018, the Tenant has engaged has engaged in a campaign of harassment against the Landlord's staff, particularly the Landlord's paralegal, and the Landlord's Site Manager. The Landlord conducted a canine inspection of all units in the complex for bedbugs. The Tenant alleged that the pest control technician conducted an illegal search by removing the protective cover of her mattress. The Tenant claimed that the mattress was damaged and sought compensation from the Landlord. The Landlord rejected her claim.

2. The Tenant commenced sending emails to the Landlord and the Landlord's staff accusing the latter of committing criminal offences and threatening to report the Landlord's paralegal to the Law Society of Ontario. The emails contained demeaning comments about the Landlord's staff, denigrating some employees as non-Canadian and therefore unable to understanding English or Canadian laws. This conduct has substantially interfered with the Landlord's reasonable enjoyment of the residential complex.

3. This conduct also substantially interferes with a lawful right, privilege or interest of the Landlord. The Landlord is required to provide its employees with a harassment-free workplace.

4. The Landlord collected a rent deposit of $1,066.69 from the Tenant and this deposit is still being held by the Landlord.

5. Interest on the rent deposit is owing to the Tenant for the period from June 1, 2018 to April 1, 2019.

6. The Tenant did not correct the problem within the time period set out in the Notice of Termination. On March 18, 2019, the Tenant sent an email to the Landlord accusing one the Landlord's employees of committing fraud by fabricating numbers for property tax assessments by the City of Toronto and requesting that the employee be dismissed.

7. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant is not a long-term tenant. The Tenant has not apologized to the Landlord's staff for her behaviour and did not attend the hearing to make a case for maintaining her tenancy. It is imperative for the Landlord to provide its staff with a workplace that is free from harassment.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of September 30, 2019. The Tenant must move out of the rental unit on or before September 30, 2019.

2. The Tenant shall also pay to the Landlord $35.07 per day for compensation for the use of the unit from October 1, 2019 to the date the Tenant moves out of the unit

3. The Tenant shall also pay to the Landlord $190.00 for the cost of filing the application.

4. If the Tenant does not pay the Landlord the full amount owing on or before August 2, 2019, the Tenant will start to owe interest. This will be simple interest calculated from August 3, 2019 at 3.00% annually on the balance outstanding.

5. If the unit is not vacated on or before September 30, 2019, then starting October 1, 2019, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after October 1, 2019.

July 22, 2019
Date Issued

Egya Sangmuah
Member, Landlord and Tenant Board

Please note the Toronto South LTB office will be moving on July 20, 2019.

For all in-person visits:

Prior to July 20, 2019:
79 St. Clair Avenue East, Suite 212
Toronto ON M4T 1M6

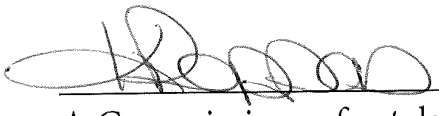
On or after July 29, 2019:
15 Grosvenor Street, 1st Floor
Toronto ON M7A 2G6

The office will be closed from July 20-28 in order to facilitate the move.

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

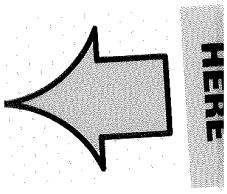
In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 1, 2020 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

This is Exhibit "F" to the Affidavit of Sarah Jane Elizabeth Snyder, sworn before me this 2nd day of August 2022



A Commissioner for taking affidavits, etc.

Kalliopy Penny Peppas, a Commissioner, etc.,
Province of Ontario, for Cohen Highley LLP,
Barristers and Solicitors.
Expires October 25, 2022.



Order under Section 69
Residential Tenancies Act, 2006

File Number: TSL-21777-21

In the matter of: 2709, 565 SHERBOURNE STREET
TORONTO ON M4X1W7

Between: Medallion Corporation — Landlord

and

Isaac Bon Hillier
Maritza Ortiz — Tenants

I hereby certify this is a true copy of an Order dated
FEB 9, 2022
TR
Landlord and Tenant Board

Medallion Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Maritza Ortiz (MO) and Isaac Bon Hillier (IBH) (the 'Tenants') The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard via video/teleconference on October 12, 2021.

Only the Landlord's Legal Representative Mark Melchers attended the hearing.

As of 3:40 p.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

1. On May 4, 2021 the Landlord filed the application to end the tenancy and evict the Tenants based on two (N5 form) notices for termination given to the Tenants.

2. The first N5 notice was given to the Tenant on December 11, 2020, alleging the behaviour and conduct of the Tenant (IBH) has substantial interfered with the reasonable enjoyment of other Tenants and the lawful right, privilege and interests of the Landlord.

3. Subsection 64(1) of the Act states: A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant(s), another occupant of the rental unit or a person permitted in the residential complex by the tenant(s) is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

4. The notice alleged that the Tenant (IBH) does not wear a face mask in the residential complex or follow other COVID pandemic recommendations as required by the City of Toronto Health Authority guidelines, and was verbally abusive to the Landlord's property administrative employees, as well as verbally confronting other tenants if they are wearing a mask or are vaccinated.

5. Section 64(3) of the Residential Tenancies Act 2006, (the 'Act') provides that the type of N5 Notice served by the Landlord is void if the Tenant(s), within seven (7) days after receiving the notice stops the activity or corrects the conduct/behaviour. In this case, the N5 was served on December 11, 2020, which means the seven (7) day voiding period ran from December 12, 2020 to December 18, 2020.

6. The Landlord provided no documentary evidence that the Tenant(s) abusive behaviour or conduct continued during the voiding period, therefore, I must find the Tenant(s) voided the first N5 notice.

7. Pursuant to section 68 of the Act, before serving a second N5 notice of termination the Landlord must have previously been given a valid first notice of termination with an opportunity to void the notice within 7 days of it being given. It is only if this first notice is given and the conduct resumes or a situation arises that constitutes grounds for a notice of termination within six months after the first notice was given that a non-voidable N5 notice can be served.

8. A second (N5) notice was given to the Tenants on April 30, 2021 for further abusive behaviour complaints that the Landlord received from other tenants in the residential complex regarding the Tenant (IBH) ongoing preaching to them about his own opinion about vaccinations. The Tenant (IBH) continued to speak inappropriately to other tenants regarding their personal beliefs of the COVID pandemic.

9. While the Tenant (IBH) may be medically exempt from wearing a face mask, he continues to be required by municipal and provincial health regulations to respect and follow other guidelines such as social distancing while in the common areas of the residential complex.

10. The Tenants did not attend the hearing to make submissions.

11. Based on the Landlord's uncontested testimony, I find the Tenant(s) have substantially interfered with the reasonable enjoyment of the residential complex for all usual purposes by another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or other tenants that reside in the residential complex.

12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant(s) were provided an opportunity to retain their tenancy by refraining from having unwanted conversations with other tenants regarding the COVID 19 pandemic and their personal choice on vaccinations and masks, to no avail.

13. The Landlord collected a rent deposit of $1,380.34 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from January 1, 2021.

14. The order contains all the reasons for the decision within the order. No other reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated effective February 20, 2022. The Tenant(s) must moved out of the rental unit on or before February 20, 2022.

2. The Tenants shall pay to the Landlord $10,681.82, which represents compensation for the use of the unit from May 18, 2021 to February 9, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.

3. The Tenants shall also pay to the Landlord $45.01 per day for compensation for the use of the unit from February 10, 2022 to the date they move out of the unit.

4. The Tenants shall also pay to the Landlord $186.00 for the cost of filing the application.

5. If the Tenants do not pay the Landlord the full amount owing on or before February 20, 2022, they will start to owe interest. This will be simple interest calculated from February 21, 2022 at 2.00% annually on the balance outstanding.

6. If the unit is not vacated on or before February 20, 2022, then starting February 21, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 21, 2022.

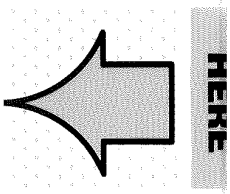
February 9, 2022
Date Issued

Randy Aulbrook
Member, Landlord and Tenant Board

Toronto South-RO
15 Grosvenor Street, 1st Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

This is Exhibit "G" to the Affidavit of Sarah Jane Elizabeth Snyder, sworn before me this 2nd day of August 2022



A Commissioner for taking affidavits, etc.

Kalliopy Penny Peppas, a Commissioner, etc.,
Province of Ontario, for Cohen Highley LLP,
Barristers and Solicitors.
Expires October 25, 2022.

Order under Section 21.2 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

File Number: TSL-21777-21-RV

In the matter of: 2709, 565 SHERBOURNE STREET
TORONTO ON M4X1W7

Between: Medallion Corporation — Landlord

and

Isaac Bon Hillier
Maritza E. O. Ortiz — Tenants

I hereby certify this is a true copy of an Order dated
FEB. 17, 2022
Landlord and Tenant Board

Review Order

Medallion Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Maritza E. O. Ortiz and Isaac Bon Hillier (the 'Tenants'). The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date. This application was resolved by order TSL-21777-21 issued on February 9, 2022.

On February 14, 2022, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing.

Determinations:

1. To put this request to review in context, it is helpful to review the following facts.

2. The Tenants have since July 12, 2021 been asserting a right to be referred to as “Chad” and “Stacy” without providing any evidence that these are their legal names and without seeking an order from the Board authorizing this practice.

3. This matter was first scheduled to be heard in July 2021, but the hearing was rescheduled at the request of one of the Tenants who submitted the request using the name “Chad”. The Tenants sought the rescheduling due to a death in the family and because they required time to prepare for the hearing. In the request, “Chad” asserted that the Tenants required until “no sooner than Sept20” to be properly prepared for a hearing. The Tenants also requested an in-person hearing.

4. The Board's endorsement granting the request to reschedule and denying the request for an in-person hearing issued on July 22, 2021. Although Vice-Chair Henry granted the request to reschedule, finding that the death of a family member constituted an "exceptional circumstance", the Board denied the request to reschedule the hearing according to the timeline proposed by the Tenants for the following reasons:

> The Tenants also request that the hearing be rescheduled to a date not before September 20, 2021 to give them additional time to prepare for the hearing. Especially given that the LTB served the parties with the Notice of Hearing on July 5, 2021, the Tenants have not adequately explained their need for this amount of additional time to prepare for the hearing. As such, I did not find in favour of this basis of the rescheduling request.

5. Vice-Chair Henry denied the Tenants' request for an in-person hearing for the following reasons:

> The LTB is proceeding with the authority set out in the *Hearings in Tribunal Proceedings (Temporary Measures) Act*, S.O. CHAPTER 5, SCHEDULE 3, which has provided the LTB with broad powers to determine the format of hearings as it considers appropriate. As a result of the Covid-19 pandemic, in order to protect the health and safety of the parties, the public and employees, the LTB is scheduling or converting all in-person hearings to proceed in writing, by teleconference or videoconference for the foreseeable future. I also note Section 5.2(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990 CHAPTER S. 22 ("SPPA") provides: "The Tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
>
> For the following reason, I am not satisfied that holding an electronic hearing is likely to cause the Tenants significant prejudice or that the Tenants have established accommodation needs that cannot be met by an electronic hearing.
>
> In the request, the Tenants state, without elaboration, that they require an in-person hearing as an accommodation. While the Tenants are not required to disclose personal medical information in support of the request, without an explanation as to why an electronic hearing is likely to cause them significant prejudice or why their accommodation needs cannot be met by an electronic hearing, I am unable to determine that the concerns raised by the Tenants are not most appropriately addressed in the context of an electronic hearing.
>
> The Tenants may consider filing a fresh request, with reasons, should any circumstances arise that would result in an electronic hearing causing them significant prejudice or should they experience accommodation needs that cannot be met by an electronic hearing.
>
> If the Tenants have any concerns with respect to the management of the hearing, these should be brought to the attention of the presiding adjudicator at the start of the hearing and when they arise during the hearing.

> The Tenants may consider contacting their local community legal clinic prior the hearing. To find their local legal clinic, the Tenant may contact Legal Aid Ontario at 1-800-668-8258. The Tenants may also wish to contact the Tenant Duty Counsel Program (TDC). TDC has created an online registration system that tenants with a scheduled hearing may use to request legal assistance. This system can be accessed at www.tdc.acto.ca.

6. "Chad" wrote to the Board on July 26, 2021 and provided a response to the Board's endorsement. This response, which was not a second request to reschedule, incorrectly asserted that the Board denied the request to reschedule and asserted that the Tenants were therefore entitled to an "additional extension of at least 7-days to account for our being unreasonable forced to compensate for the professional incompetence" of Vice-Chair Henry. At the same time, "Chad's" response to the endorsement does not provide any additional explanation for why an electronic hearing is likely to cause significant prejudice or why the Tenants' accommodation needs cannot be met by an electronic hearing. Instead, "Chad" asserted that the Board probably does not have jurisdiction over the matter given its constitutional nuance.

7. The Board rescheduled the matter to be heard by videoconference on October 12, 2021, which is after the date initially proposed by the Tenants. The notice of hearing, like the notice of hearing issued for the July 27, 2021 hearing, expressly stated, in part:

> If you are a Tenant and wish to obtain legal advice, contact your local community legal clinic. To find your local legal clinic, contact Legal Aid Ontario at 1-800-668-8258. Please seek legal advice PRIOR to your hearing.
>
> Tenant Duty Counsel has also created an online registration system to request legal assistance if you have a scheduled hearing which can be accessed at www.tdc.acto.ca.
>
> Tenant Duty Counsel is a service offered through Legal Aid Ontario and is not affiliated with the LTB.
>
> [Emphasis added.]

8. On October 1, 2021, "Chad" sent an e-mail to the Board requesting a rescheduling of the October 12, 2021 hearing to "no earlier than Feb12". The request cited marital difficulties and noted that "Chad" "may simply throw the Hearing to spite my wife". The Board replied by sending "Chad" a copy of a Request to Reschedule a Hearing form with the following comment: "Please note that you will need to get consent form the other party. Alternatively, you can attend the hearing and make a request before the Board Member to have the hearing adjourned to a later date."

9. On October 5, 2021, "Chad" filed a request to reschedule a hearing. The request noted that the Tenants had not obtained the Landlord's consent. "Chad" asserted that the Tenants are unable to make competent defence to the Landlord's application. The

request cited an incident where the Tenants were denied airplane carriage on July23 and the inability of the requesting Tenant's wife to travel out-of-province until Sep04. The request refers to an article which appears to be published by "Chad", and which appears to suggest that "Chad" was denied airplane carriage for failure to meet the requirements of the exemption to wear a face-covering in compliance with an order from the Minister of Transport. "Chad" asserted that he is "somewhat of an emotional mess" because he was unable to accompany his wife to assist her and that "Chad" is rendered unable to make competent defence without the Tenants' situation being resolved.

10. Member Lang denied the request to reschedule by endorsement dated October 6, 2021 for the following reasons:

> A request has been made to reschedule this matter. The request was made under a name other than the Tenants' names; however, it appears to be one of the Tenants who is making the request. All orders and correspondence from the Board will use the Tenants names as they appear on the application until there is an order or direction to do otherwise.
>
> The request to reschedule is denied.
>
> Rule 21.1 of the Board's Rules of Procedure provides that a request to reschedule must be on consent. Rule 21.2 provides that the Board may grant the request even if the requestor has not complied with Rule 21.1 when satisfied that it was not reasonably possible for the party making the request to comply with Rule 21.1. I am not satisfied that it was not reasonably possible for the party making the request to comply with Rule 21.1.
>
> The Tenants are expected to attend the hearing or send a representative. They may request an adjournment at the hearing.

11. Neither of the Tenants attended the hearing scheduled for October 12, 2021 at 9:00 a.m. However, "Chad" did provide submissions to the Board by e-mail on October 12, 2021 at 3:00 a.m. and 3:29 a.m. In the former, "Chad" asserted that the Landlord's legal representative is acting deliberately to abuse the Board's process, that there is disclosure outstanding and that "Chad" is unable to make competent defence without production of further disclosure. In the latter, "Chad" admitted that his "real name is Isaac Bon Hillier" and asserted that the Landlord "failed to provide the full evidence disclosure" and that the Tenants "are unable to attend the scheduled hearing" without providing any further particulars. Chad requested the Board "have your duty counsel attend for the respondents to put it over fot [sic] a month or so and demand that the landlord produce full and complete video evidence."

12. The Tenants' request to review asserts both that the Tenants were not reasonably able to participate in the hearing and that there is a serious error.

13. The Tenant's request to review asserts that they were not reasonably able to participate in the October 12, 2021 proceeding because their October 5, 2021 rescheduling request was unreasonably denied. There is no arguable merit to this submission, primarily

because the Tenants were aware of the proceeding, because the decision denying the rescheduling request did not prevent the Tenant's from attending the electronic hearing to request an adjournment and because neither the communications before nor the request to review provides a reasonable explanation for either of the Tenants failure to attend the October 12, 2021 proceeding.

14. Although the requesting to review asserts that the Tenants expected to hear back from the Board after "Chad" sent an e-mail to the Board on October 12, 2021 and that the Tenant's assumed they would receive further updates, this was in my view an unreasonable expectation given the Board's express direction to the effect that the Tenant's were expected to be present at the hearing and given the Board's multiple notices to the effect that tenants should seek legal advice prior to the hearing and that Tenant Duty Counsel is not affiliated with the Board. I am further supported in this conclusion by the fact that neither of the Tenants' October 12, 2021 e-mails address why they were not reasonably able to comply with Rule 21.1, which if provided may have given the Tenants a reasonable expectation that a different conclusion might be reached.

15. Bearing in mind that the Tenants' e-mails to the Board were sent on the hearing date just a few hours prior to the scheduled electronic hearing, the fact that Mr. Bon Hillier was communicating with the Board by electronic means supports my conclusion that there was no barrier to the Tenants' participation in the electronic hearing process for the purpose of requesting an adjournment. I am further supported in this conclusion by the fact that the request to review provides no explanation for either Tenants' inability to attend the scheduled hearing for the purpose of requesting an adjournment.

16. In circumstances where the request to review does not articulate any reasons why either of the Tenants could not attend the hearing to request an adjournment, the only reasonable conclusions available to me are that the Tenants failed to attend the hearing either due to a lack of diligence or because the Tenants were dissatisfied with the Board's decision to deny the requested rescheduling and so took unilaterally action to achieve the goal of postponing the proceeding, which would be an abuse of the Board's process. Either way, I cannot conclude that there is any arguable merit to the Tenants claim that they were not reasonably able to participate in the proceeding or that the Tenant's were denied procedural fairness or natural justice.

17. Even if I interpret the Tenants' argument as being that the Member who denied the Tenants' request to reschedule unreasonably exercised her discretion, there is no arguable merit to this submission for the following reasons.

18. An unreasonable exercise of discretion is one where the decision maker's decision is based on an error of law, a palpable and overriding error of fact, the consideration of irrelevant factors or the omission of factors that ought to have been considered: *Krieser v. Garber*, 2020 ONCA 699 (CanLII) at para. 46. The test the Board must apply is set out in Rules 21.1 and 21.2 of the Board's Rules of Procedure, which provide:

> Parties may agree to ask the LTB to reschedule a CMH or hearing prior to the scheduled date. The request to reschedule must be on consent of all parties and received by the LTB as soon as reasonably possible and not less than 5 business

days before the scheduled date. Consent is required even where the notice of hearing and application have not been delivered to the responding parties.

A request to reschedule a CMH or hearing received by the LTB less than 5 business days prior to the scheduled date or not on consent of all the parties may be granted if a Member or Hearing Officer is satisfied that it was not reasonably possible for the party making the request to comply with Rule 21.1.

[Emphasis added.]

Relatedly, Board Interpretation Guideline 1, *Adjourning and Rescheduling Hearings*, states, in part:

Where the respondent fails to appear, a notice of hearing has been sent to the parties and the matter has not been adjourned or rescheduled, the Member will proceed with the hearing, and will make a decision based on the evidence provided by the applicant at the hearing.

Not preparing for a hearing based on the expectation that it will be rescheduled or adjourned has substantial risk. If the Member decides to proceed with the hearing on the date set, only the evidence presented at the hearing will be considered.

. . .

On occasion, circumstances may arise which prevent a party from following the Board's requirements for rescheduling a hearing. For example, a party has repeatedly attempted to contact the other parties to request their consent to reschedule a hearing and has not received a response, or a party has an important medical procedure scheduled at the same time as the hearing and the other parties have unreasonably refused to consent to the request to reschedule the hearing.

In such circumstances a party may submit a request to reschedule the hearing as soon as reasonably possible. The party should explain why they failed to obtain the consent of the other parties or why the request was made less than 5 business days before the hearing. The party should include with their request any documents which may tend to support the explanation provided in the request.

The request will be considered by a Member or Hearing Officer. The request may be granted if the Member or Hearing Officer is satisfied that it was not reasonably possible for the party making the request to comply with Rule 21.1. If the Board does not grant the request, the hearing will proceed on the originally scheduled date and the parties or their representatives must attend.

On rare occasion last minute unforeseen events such as bad weather or a sudden serious illness may prevent a party from attending a hearing. In such circumstances the party should notify the Board by telephone as soon as they become aware of this, and inform the other party or their representative, as well. The application will remain on the list of hearings for the scheduled time, but the Member will be

advised of the telephone message, where possible. If the Member is satisfied that the circumstances are exceptional, the Member may adjourn the hearing without the party being present.

[Emphasis added.]

19. In my view, it cannot be said that the Member who denied the Tenants' request to reschedule unreasonably exercised her discretion. She considered the relevant factors, namely Rules 21.1 and 21.2. Since the request itself does not articulate any reasons why the Tenants failed to obtain the consent of the Landlord, the hearing Member did not err in refusing to grant the adjournment in accordance with Rule 21.1.

20. With respect to the Tenants' claim that the decision refusing the request to reschedule is inconsistent with the decisions in *Espinoza v. The Napanee Beaver Limited*, 2019 HRTO 1579 (CanLII), in which the Human Rights Tribunal of Ontario (the 'HRTO') found that the death of the vice-president of the corporate respondent's mother was an exceptional circumstances warranting an adjournment, *Mustafa v. Corporation of the City of Mississauga*, 2012 HRTO 293 (CanLII), in which the HRTO adjourned a hearing based on the recent death of the applicant's mother supported by a death certificate on consent and *Chmurzewski v. Natural Touch Rehabilitation Center*, 2013 HRTO 394 (CanLII), in which the HRTO found that the death of the applicant's father was an exceptional circumstance granting an adjournment, it is important to consider the context.

21. As noted above, the Board granted the Tenants' initial request to reschedule on July 22, 2021 after finding that the death of the Tenants' family member constituted an exceptional circumstance. The separation of the Tenants appears to be related to Mr. Bon Hillier's failure to comply with the air carrier's policies respecting face-coverings. Mr. Bon Hillier only indicated that he was "somewhat" affected by the separation from his wife, which weighs against a finding of exceptional circumstances. In circumstances where none of the above-cited decisions address the situation of a second request more than 2-months later in relation to the same death in the family it cannot be said that the decision to deny the second request to reschedule is inconsistent with these decisions.

22. The Tenants also claim that there are "significant evidentiary concerns, such as the lack of complete video disclosure, and the procedural unfairness of the fact that the tenants were denied the right to make full response." There is not arguable merit to either of these claims because these are the issues the Tenants ought to have raised at the scheduled hearing in support of a request to adjourn the proceeding. However, as noted in *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 (CanLII):

> If parties are not diligent in dealing with legal proceedings then they cannot demand that a Tribunal waste its resources by rehearing matters a second time. To allow this would undermine the ability of the administration of justice to deliver timely, cost-effective and final orders.

23. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings

It is ordered that:

1. The request to review order TSL-21777-21 issued on February 9, 2022 is denied. The order is confirmed and remains unchanged.

February 17, 2022
Date Issued

Douglas Wilkins
Member, Landlord and Tenant Board

Toronto South-RO
15 Grosvenor Street, 1st Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

Divisional Court File No: 107/22

MEDALLION CORPORATION	-and-	ISAAC BON HILLIER AND MARITZA ORTIZ
Landlord/Responding Party/Respondent in Appeal		Tenants/Moving Parties/Appellants in Appeal

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF SARAH JANE ELIZABETH SNYDER

COHEN HIGHLEY LLP
55 King Street West, Suite 1001
Kitchener, ON N2G 4W1
Tel: (226) 476-4444
Fax: (519) 672-5960
Mark Melchers, LSO #64734F
Lawyer for the Landlord (Respondent)

Email addresses/fax numbers of parties served:

Isaac Bon Hillier:
isaac@henrycase.org/unknown
Maritza Ortiz: unknown/unknown
Landlord and Tenant Board:
Valerie.crystal@ontario.ca/416-314-2379

B149

B149

Divisional Court File No: 107/22

MEDALLION CORPORATION	-and-	ISAAC BON HILLIER AND MARITZA ORTIZ
Landlord/Responding Party/Respondent in Appeal		Tenants/Moving Parties/Appellants in Appeal

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

COHEN HIGHLEY LLP
55 King Street West, Suite 1001
Kitchener, ON N2G 4W1
Tel: (226) 476-4444
Fax: (519) 672-5960
Mark Melchers, LSO #64734F
Lawyer for the Landlord (Respondent)

Email addresses/fax numbers of parties served:

Isaac Bon Hillier:
isaac@henrycase.org/unknown
Maritza Ortiz: unknown/unknown
Landlord and Tenant Board:
Valerie.crystal@ontario.ca/416-314-2379

B150

Court File No.: 107/22

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

MEDALLION CORPORATION

Landlord / Respondent

-and-

ISAAC BON HILLIER and MARITZA ORTIZ

Tenants / Appellants

FACTUM OF THE LANDLORD AND TENANT BOARD

(Appellant's Motion for Pseudonyms)

August 18, 2022

TRIBUNALS ONTARIO
LEGAL SERVICES
15 Grosvenor Street, Ground Floor
Toronto, ON, M7A 2G6
Fax: 416-314-2379

Valerie Crystal
LSO# 68702G
Tel: 416-662-8257
Email: valerie.crystal@ontario.ca

Lawyer for the
Landlord and Tenant Board

TO: **REGISTRAR**, **DIVISIONAL COURT**
130 Queen Street West
Toronto, ON., M5H-2N5
TeL: 416-327-5100
Email: scj-csj.divcourtmail@ontario.ca

AND TO: **ISAAC BON HILLIER and MARITZA ORTIZ**
2709 – 565 Sherbourne Street
Toronto, ON M4X 1W7

E-mail: isaac@henrycase.org
chad@henrycase.org
stacy@openontario.org

Self-Represented Appellants (Tenants)

AND TO: **COHEN HIGHLEY LLP**
55 King Street West, Suite 1001
Kitchener, ON N2G 4W1

Mark W. Melchers , LSO#64734F
Tel: (226) 476-4444
Fax: (519) 576-2830
E-mail: melchers@cohenhighley.com

Lawyer for the Respondent (Landlord)

INDEX

PART I – OVERVIEW

1. The moving parties, tenants Isaac Bon Hillier and Maritza Ortiz, appeal from a decision of the Landlord and Tenant Board ("LTB") granting the landlord's application for eviction. The moving parties have indicated that they wish to bring a motion in this Court permitting them to be referred to by pseudonyms.

2. Although a schedule was set for the exchange of motion materials and a written motion hearing has been scheduled, the materials served by the moving parties on this motion do not include a Notice of Motion or any affidavit evidence.

3. The LTB takes no position on whether this Court should permit the moving parties to be referred to by pseudonyms in the appeal. To the extent that it is possible to decide the motion based on the materials filed, the LTB provides relevant statutory and procedural context and takes the following limited positions on the motion:

- The use of pseudonyms is a restriction on the constitutionally protected open court principle;
- The moving parties must meet the three-part test set out by the Supreme Court of Canada in *Sherman Estate v. Donovan* for restricting public access to the courts; and
- Whenever a party seeks to restrict public access to a court proceeding, including by using pseudonyms, notice must be provided to the media unless there is a court order dispensing with that requirement.

PART II – STATEMENT OF FACTS

4. The LTB takes no position on the facts in dispute between the parties, except as outlined below. The following statutory and procedural context is relevant to this appeal.

A) The Landlord and Tenant Board

5. The LTB is an adjudicative tribunal established under s. 168 of the *Residential Tenancies Act, 2006* ("*RTA*") that adjudicates disputes between landlords and tenants in a residential tenancy context. The LTB is a constituent tribunal of Tribunals Ontario.

Residential Tenancies Act, 2006, S.O. 2006, c. 17, s. 168

Adjudicative Tribunals and Clusters, O. Reg. 126/10, s. 2

6. The purposes of the *RTA* are to balance the rights and responsibilities of residential landlords and tenants, to establish a statutory mechanism for the regulation of residential rents and for protecting tenants from unlawful rent increases and evictions, and to provide for adjudication and other dispute resolution mechanisms.

Residential Tenancies Act, 2006, S.O. 2006, c. 17, s. 1

7. There is a right of appeal to this Court under s. 210(1) of the *RTA* from the LTB's final orders on a question of law. The LTB is entitled to be heard, through counsel, upon the argument of any issue in an appeal, and the appellant must provide the LTB with any documents related to the appeal. The Divisional Court may affirm, rescind, amend or replace the decision or order, or it may remit the matter back to the LTB with the Court's opinion. The Divisional Court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper

Residential Tenancies Act, 2006, S.O. 2006, c. 17, s. 210(1)-(5)

8. This Court may make interim orders on appeal pursuant to s. 134(2) of the *Courts of Justice Act*.

Courts of Justice Act, R.S.O. 1990, c. C.43, s. 134(2)

B) Openness of LTB Proceedings

9. The LTB's proceedings are open to the public in accordance with the open court principle. Unless the LTB makes an order restricting access, members of the public may attend LTB hearings, all documents in the LTB's adjudicative record for a proceeding are accessible to the public, and the LTB's publicly accessible decisions include the names of the parties.

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, s. 9(1)

Tribunal Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sch. 60, s. 2(1)-(4)

Toronto Star v. AG Ontario, 2018 ONSC 2586

10. In *Toronto Star v. AG*, the Superior Court held that the open court principle applies to administrative tribunals as well as to the courts. Access to a tribunal's adjudicative records is protected by s. 2(b) of the *Charter of Rights and Freedoms*. Openness is the presumptive rule; a party seeking to restrict access to a tribunal proceeding must meet the test for overriding the constitutionally protected right of public access to tribunal proceedings. The formulation of that test was recently modified by the Supreme Court of Canada in *Sherman Estate v. Donovan*, as set out below.

Toronto Star v. AG Ontario, 2018 ONSC 2586 at paras. 54-55, 89-94, 140
Canadian Charter of Rights and Freedoms, s. 2(b)
Sherman Estate v. Donovan, 2021 SCC 25 at para. 38

11. Prior to the *Toronto Star* decision, the LTB initialized the names of individual landlords and tenants in its published decisions. That was done in compliance with an order of the Information and Privacy Commission ("IPC"), which held that tenant names and addresses are "personal information" under the *Freedom of Information and Protection of*

Privacy Act, R.S.O. 1990, c. F.31 *("FIPPA")*, and that the LTB's predecessor, the Ontario Rental Housing Tribunal, could not disclose that information subject to the exceptions contained in *FIPPA*. However, in *Toronto Star*, the Superior Court declared the provisions of *FIPPA* that created a presumption of non-disclosure of "personal information" in tribunal adjudicative records to be of no force and effect.

> *Ontario (Rental Housing Tribunal) (Re)*, 2006 CanLII 50854 (Ont. IPC)

12. Following the *Toronto Star* decision, the LTB began including the names of landlords and tenants in its reported decisions in accordance with the open court principle. This reflects the practice of other adjudicative tribunals, including, for example, the Human Rights Tribunal of Ontario and the Licence Appeal Tribunal. In *Toronto Star*, the Court noted the importance of public access to the identities of individuals who appear before adjudicative tribunals, including landlords and tenants:

> The deleterious effects of the presumption against disclosure in s. 21(1) and related provisions of *FIPPA* are real and substantial. As counsel for the Toronto Star points out, emphasizing privacy over openness not only has a negative impact on the press but also affects other stakeholders. Regulators have no way of identifying chronic offenders, reference checks on tenants and others who come before the various tribunals are impossible to carry out. Problematic landlords, police and other actors, including repeat human rights offenders, vexatious litigants and the like cannot be discovered by members of the public who have to engage with them. The public cannot know about upcoming hearings for a number of the tribunals, and the media are unable to engage public debate about cases which they do not know are forthcoming and so do not attend or cover. [Emphasis added.]
>
> *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at para. 111

13. Parties who wish to restrict public access to an LTB proceeding may request a confidentiality order. The legislative test for an order restricting public access to the LTB's adjudicative record is set out as follows in s. 2(2) of the *Tribunal Adjudicative Records Act, 2019* ("*TARA*"), which was enacted following the *Toronto Star* decision:

Confidentiality orders
(2) A tribunal may, of its own motion or on the application of a person referred to in subsection (3), order that an adjudicative record or portion of an adjudicative record be treated as confidential and that it not be disclosed to the public if the tribunal determines that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

Tribunal Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sch. 60, s. 2(2)

14. In adjudicating requests for confidentiality orders, the LTB is also guided by the test set out by the Supreme Court of Canada in *Sherman Estate v. Donovan*, set out in greater detail below, for limiting public access to court proceedings.

Sherman Estate v. Donovan, 2021 SCC 25 at para. 38

15. The Tribunals Ontario Access to Records Policy, which applies to the LTB, includes the following information regarding the public nature of information in its proceedings:

4.1 Personal Information May Become Public

Tribunals Ontario recognizes that sensitive personal or financial information may be included in documents provided as part of a proceeding. Personal information, including names, contact information, medical, financial, employment, and education information, submitted as part of a proceeding may become public in an open hearing, and may be contained in decisions, orders, and case files, unless an order to restrict access is made.

4.2 Requesting a Confidentiality Order

Tribunals may make exceptions to the openness of hearings and case file information for important privacy interests. The tribunal will decide on a case-by-case basis if any measures are necessary to restrict access to sensitive information, and may make an order to:

- restrict public attendance at a hearing;
- restrict access to all or part of the documents filed with the tribunal;

- restrict publication of certain information; or,
- anonymize an individual's name or other identifying information in the tribunal's decision.

...

[Emphasis added.]

Tribunals Ontario, Access to Records Policy, LTB Factum, Schedule B, Tab A

16. In the present matter, the LTB's decision and review decision include the tenants' names, in accordance with the LTB's usual practice. The review decision states as follows regarding the tenants' desire to be referred to by pseudonmyms:

> The Tenants have since July 12, 2021 been asserting a right to be referred to as "Chad" and "Stacy" without providing any evidence that these are their legal names and without seeking an order from the Board authorizing this practice.
>
> LTB Review issued February 17, 2022, Motion Record of the Reponding Party, Tab G, pp. 138-145 (PDF pp. 141-148) at para. 2

PART III – ISSUES AND LAW

A) Test for Limiting Court Openness

17. Normally parties are referred to by name in the title of court proceedings, in accordance the open court principle and Rules 14.06 and 61.04(2) of the *Rules of Civil Procedure*. The use of pseudonyms or initials in place of a party's name is a restriction on the open court principle.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rules 14.06, 61.04(2)
A.B. v. Canada (Attorney General), 2016 ONSC 1571 at paras. 13-15, 18
A.M. v Toronto Police Service, 2015 ONSC 5684 at para. 16 (Div. Ct.)
S.M. v. C.T., 2020 ONSC 4819 at para. 16

18. In *Sherman Estate v. Donovan*, the Supreme Court of Canada reaffirmed that "[c]ourt openness is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy." In order to overcome the "strong presumption" of openness, the party asking the Court to exercise its discretion to limit public access to the courts must establish the following:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estate v. Donovan, 2021 SCC 25 at paras. 30, 33, 38

19. If a privacy interest is alleged, it must be shown that "the information in question strikes at what is sometimes said to be the core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings." "Neither the sensibilities of individuals nor the fact that openness is disadvantageous, embarrassing or distressing to certain individuals will generally on their own warrant interference with court openness."

Sherman Estate v. Donovan, 2021 SCC 25 at paras. 34, 63

20. While a serious risk to an important public interest may be established either by direct evidence or on the basis of logical inferences, the "inference must still be grounded in objective circumstantial facts that reasonably allow the finding to be made inferentially. Where the inference cannot reasonably be drawn from the circumstances, it amounts to speculation."

Sherman Estate v. Donovan, 2021 SCC 25 at para. 97

21. There is also a presumption that the media will be given notice of any motion for an order restricting court openness, although the courts have discretion to make an order dispensing with notice. The Superior Court held in *A.M. v. Toronto Police Service* that media notice is to be provided "whenever a party is seeking to restrict access to a court proceeding, whether by way of seeking permission to use a pseudonym or initials." The rationale for this general rule was explained as follows:

> That presumption flows from a combination of the open court principle and the salient fact that the media is the mechanism by which members of the public are informed of the activities that take place in the courts.

A.M. v Toronto Police Service, 2015 ONSC 5684 at para. 6

See also: *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at para. 51

B) Summary

22. The use of pseudonyms or initials is a restriction on the constitutionally protected principle of court openness. In order to grant the tenants' motion, this court must be satisfied that the *Sherman Estate* test for limiting the public's access to the courts is met. Such an order would normally require notice to the media.

PART IV - ORDER REQUESTED

23. The LTB takes no position with respect to the order sought.

24. The LTB does not seek its costs of this motion and requests that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 18, 2022

_____

Valerie Crystal, LSO # 68702G

Lawyer for the Landlord and Tenant Board

SCHEDULE A – LIST OF AUTHORITIES

1. *Toronto Star v. AG Ontario*, 2018 ONSC 2586
2. *Sherman Estate v. Donovan*, 2021 SCC 25
3. *Ontario (Rental Housing Tribunal) (Re)*, 2006 CanLII 50854 (Ont. IPC)
4. *A.B. v. Canada (Attorney General)*, 2016 ONSC 1571
5. *A.M. v Toronto Police Service*, 2015 ONSC 5684 (Div. Ct.)
6. *S.M. v. C.T.*, 2020 ONSC 4819
7. *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33

SCHEDULE B – LEGISLATION

1. *Residential Tenancies Act, 2006*, S.O. 2006, c. 17

2. *Adjudicative Tribunals and Clusters*, O. Reg. 126/10

3. *Courts of Justice Act*, R.S.O. 1990, c. C.43

4. *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

5. *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60

6. *Canadian Charter of Rights and Freedoms*

7. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

8. LTB Documents

TAB A – Tribunals Ontario, Access to Records Policy

1. *Residential Tenancies Act, 2006*, S.O. 2006, c. 17

Purposes of Act

1 The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. 2006, c. 17, s. 1.

...

Board

168 (1) The Ontario Rental Housing Tribunal is continued under the name Landlord and Tenant Board in English and Commission de la location immobilière in French. 2006, c. 17, s. 168 (1).

Board's jurisdiction

(2) The Board has exclusive jurisdiction to determine all applications under this Act and with respect to all matters in which jurisdiction is conferred on it by this Act. 2006, c. 17, s. 168 (2).

...

Appeal rights

210 (1) Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law. 2006, c. 17, s. 210 (1).

Board to receive notice

(2) A person appealing an order under this section shall give to the Board any documents relating to the appeal. 2006, c. 17, s. 210 (2).

Board may be heard by counsel

(3) The Board is entitled to be heard by counsel or otherwise upon the argument on any issue in an appeal. 2006, c. 17, s. 210 (3).

Powers of Court

(4) If an appeal is brought under this section, the Divisional Court shall hear and determine the appeal and may,

(a) affirm, rescind, amend or replace the decision or order; or

(b) remit the matter to the Board with the opinion of the Divisional Court. 2006, c. 17, s. 210 (4).

Same

(5) The Divisional Court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper. 2006, c. 17, s. 210 (5).

2. *Adjudicative Tribunals and Clusters*, O. Reg. 126/10

Cluster, Tribunals Ontario

2. The following adjudicative tribunals are designated as a cluster of tribunals entitled "Tribunals Ontario" in English and "Tribunaux décisionnels Ontario" in French:

1. Animal Care Review Board.
2. Assessment Review Board.
3. REVOKED: O. Reg. 282/20, s. 2.
4. Child and Family Services Review Board.
5. REVOKED: O. Reg. 282/20, s. 2.
6. REVOKED: O. Reg. 668/21, s. 1.
7. Custody Review Board.
8. REVOKED: O. Reg. 282/20, s. 2.
9. Fire Safety Commission.
10. Human Rights Tribunal of Ontario.
11. Landlord and Tenant Board.
12. Licence Appeal Tribunal.
13., 14. REVOKED: O. Reg. 282/20, s. 2.
15. Ontario Civilian Police Commission.
16. Ontario Parole Board.
17. Ontario Special Education Tribunal (English).
18. Ontario Special Education Tribunal (French).
19. Social Benefits Tribunal. O. Reg. 494/18, s. 1; O. Reg. 282/20, s. 2; O. Reg. 668/21, s. 1.

3. *Courts of Justice Act*, R.S.O. 1990, c. C.43

Powers on appeal

134 (1) Unless otherwise provided, a court to which an appeal is taken may,

(a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;

(b) order a new trial;

(c) make any other order or decision that is considered just. R.S.O. 1990, c. C.43, s. 134 (1).

Interim orders

(2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal. 1999, c. 12, Sched. B, s. 4 (3).

4. *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

Hearings to be public, exceptions

9 (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Written hearings

(1.1) In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

Electronic hearings

(1.2) An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

(a) it is not practical to hold the hearing in a manner that is open to the public; or

(b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

5. *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60

Adjudicative records public

2 (1) A tribunal shall make those adjudicative records in its possession that relate to proceedings commenced on or after the day this section comes into force available to the public in accordance with this Act, including any rules made under section 3.

Confidentiality orders

(2) A tribunal may, of its own motion or on the application of a person referred to in subsection (3), order that an adjudicative record or portion of an adjudicative record be treated as confidential and that it not be disclosed to the public if the tribunal determines that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

Who may apply

(3) The following persons may apply to the tribunal for a confidentiality order in respect of an adjudicative record:

1. A party to a proceeding to which the adjudicative record relates.
2. A person who would be affected by the disclosure of the information contained in the adjudicative record or a portion of the adjudicative record.

Scope of order

(4) A confidentiality order may apply to adjudicative records regardless of when the proceeding to which they relate was commenced.

6. ***Canadian Charter of Rights and Freedoms***

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

7. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

Title of Proceeding

14.06 (1) Every originating process shall contain a title of the proceeding setting out the names of all the parties and the capacity in which they are made parties, if other than their personal capacity. R.R.O. 1990, Reg. 194, r. 14.06 (1).

(2) In an action, the title of the proceeding shall name the party commencing the action as the plaintiff and the opposite party as the defendant. R.R.O. 1990, Reg. 194, r. 14.06 (2); O. Reg. 131/04. s. 7.

(3) In an application, the title of the proceeding shall name the party commencing the application as the applicant and the opposite party, if any, as the respondent and the notice of application shall state the statutory provision or rule, if any, under which the application is made. R.R.O. 1990, Reg. 194, r. 14.06 (3).

Exception

(4) Subrules (1), (2) and (3) do not apply to a proceeding under Rule 74, 74.1 or 75. O. Reg. 484/94, s. 6; O. Reg. 111/21, s. 3.

...

Commencement of Appeals

Time for Appeal and Service of Notice

61.04

...

Title of Proceeding

(2) The title of the proceeding in an appeal shall be in accordance with Form 61B. R.R.O. 1990, Reg. 194, r. 61.04 (2).

8. LTB Documents

TAB A

Tribunals Ontario
Tribunaux décisionnels Ontario

Access to Records Policy

1.0 Overview: Commitment to Openness

Tribunals Ontario is guided by the open court principle and is committed to transparency, accountability and accessibility in its decision-making and operations.

In general, most hearings and case files are publicly accessible, consistent with the *Statutory Powers Procedure Act* (SPPA), *Tribunal Adjudicative Records Act* (TARA), and the open court principle. The open court principle assumes that openness and transparency enhance the public's understanding of, and confidence in, the administrative justice system; and as such, the records relied on in adjudication should be generally available to the public.

In certain circumstances, access to records may be restricted by a statutory provision, common law rule, or a tribunal or court order limiting access. Most decisions and orders of Tribunals Ontario tribunals are available online for free on CanLII and in some cases on boards' or tribunals' websites.

2.0 Accessing Case Files and Other Documents

2.1 Availability of Case Files

The adjudicative records in most Tribunals Ontario's case files are available to the public on request with exceptions.

Tribunals Ontario's case files contain the adjudicative records related to a proceeding in accordance with the *Tribunals Adjudicative Records Act.* Case files may include:

- Applications, appeals, or other documents that start a proceeding;
- Notices of hearing;
- Written submissions;
- Documentary evidence;
- Recordings and transcripts of the proceedings, if any;

- Orders, decisions, and reports; and,
- Schedules of hearings and tribunal dockets.

Personal notes, draft decisions, draft orders and communications related to draft decisions/orders are not part of a case file.

Available adjudicative records may be retrieved and provided where sufficient identifying case file information is supplied by the requester. Requests must identify the specific record and related proceeding, and staff cannot conduct research on behalf of requesters. Tribunals are not able to extract, compile or aggregate data from case files. Tribunals Ontario may make caseload information and other tribunal data available in Annual Reports. Tribunal records are subject to archiving and retention schedules and may not be retrievable.

2.2 Restrictions on Access to Records

Specific statutory, regulatory, or rules-based restrictions on access may apply to boards and tribunals, including, for example, the Ontario Parole Board, the Social Benefits Tribunal, and the Criminal Injuries Compensation Board. Portions of any board or tribunal proceeding may also be closed to the public, and any reports or documents related to closed portions of proceedings are not part of the publicly available case file. Access requests may be determined by adjudication on a case-by-case basis.

2.3 Records Related to Mediation and Settlement

Mediation and settlement discussions are held to facilitate the resolution or narrowing of issues in dispute and are therefore closed to the public. Materials filed solely for the purposes of mediation or settlement discussions are confidential and are not contained in the case file.

2.4 Access to Institutional Files and Other Records

Requests for Tribunals Ontario institutional or operational records (i.e. not related to case files) may be subject to access under the *Freedom of Information and Protection of Privacy Act* (FIPPA). FIPPA sets out procedures for making requests and outlines limits to the right of access. If a FIPPA request is required, Tribunals Ontario staff will inform the requester and assist with processing the request.

3.0 Procedures for Accessing Case Files

3.1 Adjudicative Process May Vary by Tribunal

Tribunals Ontario recognizes that sensitive personal or financial information may be included in documents provided as part of a proceeding. Personal information, including names, contact information, medical, financial, employment, and education information, submitted as part of a

proceeding may become public in an open hearing, and may be contained in decisions, orders, and case files, unless an order to restrict access is made.

Access procedures may vary depending on the nature and function of the particular tribunal and may be subject to orders of the tribunal, Rules of Procedure, Practice Directions, and any other requirements imposed by law.

3.2 Timeframes for Public Access

Tribunals Ontario staff work to provide access to tribunal files and documents as quickly and efficiently as possible. However, the time it takes to provide access can be affected by various factors, including whether records are required for an active proceeding, whether they have been sufficiently identified so they may be retrieved, whether they are stored on-site and available, as well as other staff and adjudicator responsibilities and priorities.

3.3 Fees Timeframes for Public Access

Fees may be charged to search for, collect, or copy records in response to a records request. There is a fee waiver mechanism for individuals who might otherwise be denied access to justice because of their financial circumstances. Information about the fee waiver process is available on the Tribunals Ontario website or from tribunal staff.

3.4 Where to Make a Request

Parties to Active/Ongoing Proceedings should contact the Registrar's Office at the tribunal where the matter is being held for access to records related to their case files.

Non-Parties (Persons Not Involved in a Proceeding) should contact the Access to Records and Information Office to make a request via Access.TO-TDO@ontario.ca.

4.0 Confidentiality of Information in Case Files

4.1 Personal Information May Become Public

Tribunals Ontario recognizes that sensitive personal or financial information may be included in documents provided as part of a proceeding. Personal information, including names, contact information, medical, financial, employment, and education information, submitted as part of a proceeding may become public in an open hearing, and may be contained in decisions, orders, and case files, unless an order to restrict access is made.

4.2 Requesting a Confidentiality Order

Tribunals may make exceptions to the openness of hearings and case file information for important privacy interests. The tribunal will decide on a case-by-case basis if any measures are necessary to restrict access to sensitive information, and may make an order to:

- restrict public attendance at a hearing;
- restrict access to all or part of the documents filed with the tribunal;
- restrict publication of certain information; or,
- anonymize an individual's name or other identifying information in the tribunal's decision.

Individuals with a concern about privacy can request a confidentiality order. Requests for confidentiality orders should be made at the earliest opportunity. In deciding whether to make a confidentiality order, an adjudicator considers a number of factors including the nature of the information at issue, the interests of affected individuals, and the public interest in the openness of proceedings.

Additional information on confidentiality orders, including the types of orders available and the process for making a request can be found on the Tribunals Ontario website and in the tribunals' Rules of Procedure and Practice Directions.

5.0 Questions Related to Access to Records

Parties to an active/ongoing proceeding should contact the Registrar's Office at the tribunal where the matter is being held for questions relating access to records in their case files.

Other questions or concerns about accessing records should be directed to Access.TO-TDO@ontario.ca

B

B E T W E E N: **ISAAC BON HILLIER and MARITZA ORTIZ** Tenants/Appellants	**and**	**MEDALLION CORPORATION** Landlord/Respondent	Court File No:

Ontario
Superior Court of Justice
(Divisional Court)

Proceeding Commenced at
Toronto

FACTUM OF THE
LANDLORD AND TENANT BO

Tribunals Ontario
Legal Services
15 Grosvenor Street, Ground Flo
Toronto, ON., M7A 2G6

Valerie Crystal, LSO# 68702G
Tel: 416-662-8257
Fax: 416-314-2379
Email: valerie.crystal@ontario.ca

Lawyer for the Landlord and Tena
Board

B

Court File No.: 107/22

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

MEDALLION CORPORATION

Landlord / Respondent

-and-

ISAAC BON HILLIER and MARITZA ORTIZ

Tenants / Appellants

FACTUM OF THE LANDLORD AND TENANT BOARD

(Appellant's Motion for Pseudonyms)

August 18, 2022

TRIBUNALS ONTARIO
LEGAL SERVICES
15 Grosvenor Street, Ground Floor
Toronto, ON, M7A 2G6
Fax: 416-314-2379

Valerie Crystal
LSO# 68702G
Tel: 416-662-8257
Email: valerie.crystal@ontario.ca

Lawyer for the
Landlord and Tenant Board

TO: **REGISTRAR**, **DIVISIONAL COURT**
130 Queen Street West
Toronto, ON., M5H-2N5
TeL: 416-327-5100
Email: scj-csj.divcourtmail@ontario.ca

AND TO: **ISAAC BON HILLIER and MARITZA ORTIZ**
2709 – 565 Sherbourne Street
Toronto, ON M4X 1W7

E-mail: isaac@henrycase.org
chad@henrycase.org
stacy@openontario.org

Self-Represented Appellants (Tenants)

AND TO: **COHEN HIGHLEY LLP**
55 King Street West, Suite 1001
Kitchener, ON N2G 4W1

Mark W. Melchers , LSO#64734F
Tel: (226) 476-4444
Fax: (519) 576-2830
E-mail: melchers@cohenhighley.com

Lawyer for the Respondent (Landlord)

INDEX

PART I – OVERVIEW

1. The moving parties, tenants Isaac Bon Hillier and Maritza Ortiz, appeal from a decision of the Landlord and Tenant Board ("LTB") granting the landlord's application for eviction. The moving parties have indicated that they wish to bring a motion in this Court permitting them to be referred to by pseudonyms.

2. Although a schedule was set for the exchange of motion materials and a written motion hearing has been scheduled, the materials served by the moving parties on this motion do not include a Notice of Motion or any affidavit evidence.

3. The LTB takes no position on whether this Court should permit the moving parties to be referred to by pseudonyms in the appeal. To the extent that it is possible to decide the motion based on the materials filed, the LTB provides relevant statutory and procedural context and takes the following limited positions on the motion:

- The use of pseudonyms is a restriction on the constitutionally protected open court principle;
- The moving parties must meet the three-part test set out by the Supreme Court of Canada in *Sherman Estate v. Donovan* for restricting public access to the courts; and
- Whenever a party seeks to restrict public access to a court proceeding, including by using pseudonyms, notice must be provided to the media unless there is a court order dispensing with that requirement.

PART II – STATEMENT OF FACTS

4. The LTB takes no position on the facts in dispute between the parties, except as outlined below. The following statutory and procedural context is relevant to this appeal.

A) The Landlord and Tenant Board

5. The LTB is an adjudicative tribunal established under s. 168 of the *Residential Tenancies Act, 2006* ("*RTA*") that adjudicates disputes between landlords and tenants in a residential tenancy context. The LTB is a constituent tribunal of Tribunals Ontario.

Residential Tenancies Act, 2006, S.O. 2006, c. 17, s. 168

Adjudicative Tribunals and Clusters, O. Reg. 126/10, s. 2

6. The purposes of the *RTA* are to balance the rights and responsibilities of residential landlords and tenants, to establish a statutory mechanism for the regulation of residential rents and for protecting tenants from unlawful rent increases and evictions, and to provide for adjudication and other dispute resolution mechanisms.

Residential Tenancies Act, 2006, S.O. 2006, c. 17, s. 1

7. There is a right of appeal to this Court under s. 210(1) of the *RTA* from the LTB's final orders on a question of law. The LTB is entitled to be heard, through counsel, upon the argument of any issue in an appeal, and the appellant must provide the LTB with any documents related to the appeal. The Divisional Court may affirm, rescind, amend or replace the decision or order, or it may remit the matter back to the LTB with the Court's opinion. The Divisional Court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper

Residential Tenancies Act, 2006, S.O. 2006, c. 17, s. 210(1)-(5)

8. This Court may make interim orders on appeal pursuant to s. 134(2) of the *Courts of Justice Act*.

Courts of Justice Act, R.S.O. 1990, c. C.43, s. 134(2)

B) Openness of LTB Proceedings

9. The LTB's proceedings are open to the public in accordance with the open court principle. Unless the LTB makes an order restricting access, members of the public may attend LTB hearings, all documents in the LTB's adjudicative record for a proceeding are accessible to the public, and the LTB's publicly accessible decisions include the names of the parties.

> *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 9(1)
>
> *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60, s. 2(1)-(4)
>
> *Toronto Star v. AG Ontario*, 2018 ONSC 2586

10. In *Toronto Star v. AG*, the Superior Court held that the open court principle applies to administrative tribunals as well as to the courts. Access to a tribunal's adjudicative records is protected by s. 2(b) of the *Charter of Rights and Freedoms*. Openness is the presumptive rule; a party seeking to restrict access to a tribunal proceeding must meet the test for overriding the constitutionally protected right of public access to tribunal proceedings. The formulation of that test was recently modified by the Supreme Court of Canada in *Sherman Estate v. Donovan*, as set out below.

> *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at paras. 54-55, 89-94, 140
> *Canadian Charter of Rights and Freedoms*, s. 2(b)
> *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38

11. Prior to the *Toronto Star* decision, the LTB initialized the names of individual landlords and tenants in its published decisions. That was done in compliance with an order of the Information and Privacy Commission ("IPC"), which held that tenant names and addresses are "personal information" under the *Freedom of Information and Protection of*

Privacy Act, R.S.O. 1990, c. F.31 *("FIPPA")*, and that the LTB's predecessor, the Ontario Rental Housing Tribunal, could not disclose that information subject to the exceptions contained in *FIPPA*. However, in *Toronto Star*, the Superior Court declared the provisions of *FIPPA* that created a presumption of non-disclosure of "personal information" in tribunal adjudicative records to be of no force and effect.

> *Ontario (Rental Housing Tribunal) (Re)*, 2006 CanLII 50854 (Ont. IPC)

12. Following the *Toronto Star* decision, the LTB began including the names of landlords and tenants in its reported decisions in accordance with the open court principle. This reflects the practice of other adjudicative tribunals, including, for example, the Human Rights Tribunal of Ontario and the Licence Appeal Tribunal. In *Toronto Star*, the Court noted the importance of public access to the identities of individuals who appear before adjudicative tribunals, including landlords and tenants:

> The deleterious effects of the presumption against disclosure in s. 21(1) and related provisions of *FIPPA* are real and substantial. As counsel for the Toronto Star points out, emphasizing privacy over openness not only has a negative impact on the press but also affects other stakeholders. Regulators have no way of identifying chronic offenders, reference checks on tenants and others who come before the various tribunals are impossible to carry out. Problematic landlords, police and other actors, including repeat human rights offenders, vexatious litigants and the like cannot be discovered by members of the public who have to engage with them. The public cannot know about upcoming hearings for a number of the tribunals, and the media are unable to engage public debate about cases which they do not know are forthcoming and so do not attend or cover. [Emphasis added.]
>
> *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at para. 111

13. Parties who wish to restrict public access to an LTB proceeding may request a confidentiality order. The legislative test for an order restricting public access to the LTB's adjudicative record is set out as follows in s. 2(2) of the *Tribunal Adjudicative Records Act, 2019* ("*TARA*"), which was enacted following the *Toronto Star* decision:

Confidentiality orders
(2) A tribunal may, of its own motion or on the application of a person referred to in subsection (3), order that an adjudicative record or portion of an adjudicative record be treated as confidential and that it not be disclosed to the public if the tribunal determines that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

Tribunal Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sch. 60, s. 2(2)

14. In adjudicating requests for confidentiality orders, the LTB is also guided by the test set out by the Supreme Court of Canada in *Sherman Estate v. Donovan*, set out in greater detail below, for limiting public access to court proceedings.

Sherman Estate v. Donovan, 2021 SCC 25 at para. 38

15. The Tribunals Ontario Access to Records Policy, which applies to the LTB, includes the following information regarding the public nature of information in its proceedings:

4.1 Personal Information May Become Public

Tribunals Ontario recognizes that sensitive personal or financial information may be included in documents provided as part of a proceeding. Personal information, including names, contact information, medical, financial, employment, and education information, submitted as part of a proceeding may become public in an open hearing, and may be contained in decisions, orders, and case files, unless an order to restrict access is made.

4.2 Requesting a Confidentiality Order

Tribunals may make exceptions to the openness of hearings and case file information for important privacy interests. The tribunal will decide on a case-by-case basis if any measures are necessary to restrict access to sensitive information, and may make an order to:

- restrict public attendance at a hearing;
- restrict access to all or part of the documents filed with the tribunal;

- restrict publication of certain information; or,
- anonymize an individual's name or other identifying information in the tribunal's decision.

...

[Emphasis added.]

Tribunals Ontario, Access to Records Policy, LTB Factum, Schedule B, Tab A

16. In the present matter, the LTB's decision and review decision include the tenants' names, in accordance with the LTB's usual practice. The review decision states as follows regarding the tenants' desire to be referred to by pseudonmyms:

> The Tenants have since July 12, 2021 been asserting a right to be referred to as "Chad" and "Stacy" without providing any evidence that these are their legal names and without seeking an order from the Board authorizing this practice.
>
> LTB Review issued February 17, 2022, Motion Record of the Reponding Party, Tab G, pp. 138-145 (PDF pp. 141-148) at para. 2

PART III – ISSUES AND LAW

A) Test for Limiting Court Openness

17. Normally parties are referred to by name in the title of court proceedings, in accordance the open court principle and Rules 14.06 and 61.04(2) of the *Rules of Civil Procedure*. The use of pseudonyms or initials in place of a party's name is a restriction on the open court principle.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rules 14.06, 61.04(2)
A.B. v. Canada (Attorney General), 2016 ONSC 1571 at paras. 13-15, 18
A.M. v Toronto Police Service, 2015 ONSC 5684 at para. 16 (Div. Ct.)
S.M. v. C.T., 2020 ONSC 4819 at para. 16

18. In *Sherman Estate v. Donovan*, the Supreme Court of Canada reaffirmed that "[c]ourt openness is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy." In order to overcome the "strong presumption" of openness, the party asking the Court to exercise its discretion to limit public access to the courts must establish the following:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estate v. Donovan, 2021 SCC 25 at paras. 30, 33, 38

19. If a privacy interest is alleged, it must be shown that "the information in question strikes at what is sometimes said to be the core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings." "Neither the sensibilities of individuals nor the fact that openness is disadvantageous, embarrassing or distressing to certain individuals will generally on their own warrant interference with court openness."

Sherman Estate v. Donovan, 2021 SCC 25 at paras. 34, 63

20. While a serious risk to an important public interest may be established either by direct evidence or on the basis of logical inferences, the "inference must still be grounded in objective circumstantial facts that reasonably allow the finding to be made inferentially. Where the inference cannot reasonably be drawn from the circumstances, it amounts to speculation."

Sherman Estate v. Donovan, 2021 SCC 25 at para. 97

21. There is also a presumption that the media will be given notice of any motion for an order restricting court openness, although the courts have discretion to make an order dispensing with notice. The Superior Court held in *A.M. v. Toronto Police Service* that media notice is to be provided "whenever a party is seeking to restrict access to a court proceeding, whether by way of seeking permission to use a pseudonym or initials." The rationale for this general rule was explained as follows:

> That presumption flows from a combination of the open court principle and the salient fact that the media is the mechanism by which members of the public are informed of the activities that take place in the courts.

A.M. v Toronto Police Service, 2015 ONSC 5684 at para. 6

See also: *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at para. 51

B) Summary

22. The use of pseudonyms or initials is a restriction on the constitutionally protected principle of court openness. In order to grant the tenants' motion, this court must be satisfied that the *Sherman Estate* test for limiting the public's access to the courts is met. Such an order would normally require notice to the media.

PART IV - ORDER REQUESTED

23. The LTB takes no position with respect to the order sought.

24. The LTB does not seek its costs of this motion and requests that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 18, 2022

Valerie Crystal, LSO # 68702G

Lawyer for the Landlord and Tenant Board

SCHEDULE A – LIST OF AUTHORITIES

1. *Toronto Star v. AG Ontario*, 2018 ONSC 2586
2. *Sherman Estate v. Donovan*, 2021 SCC 25
3. *Ontario (Rental Housing Tribunal) (Re)*, 2006 CanLII 50854 (Ont. IPC)
4. *A.B. v. Canada (Attorney General)*, 2016 ONSC 1571
5. *A.M. v Toronto Police Service*, 2015 ONSC 5684 (Div. Ct.)
6. *S.M. v. C.T.*, 2020 ONSC 4819
7. *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33

SCHEDULE B – LEGISLATION

1. *Residential Tenancies Act, 2006*, S.O. 2006, c. 17

2. *Adjudicative Tribunals and Clusters*, O. Reg. 126/10

3. *Courts of Justice Act*, R.S.O. 1990, c. C.43

4. *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

5. *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60

6. *Canadian Charter of Rights and Freedoms*

7. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

8. LTB Documents

TAB A – Tribunals Ontario, Access to Records Policy

1. *Residential Tenancies Act, 2006*, S.O. 2006, c. 17

Purposes of Act

1 The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. 2006, c. 17, s. 1.

...

Board

168 (1) The Ontario Rental Housing Tribunal is continued under the name Landlord and Tenant Board in English and Commission de la location immobilière in French. 2006, c. 17, s. 168 (1).

Board's jurisdiction

(2) The Board has exclusive jurisdiction to determine all applications under this Act and with respect to all matters in which jurisdiction is conferred on it by this Act. 2006, c. 17, s. 168 (2).

...

Appeal rights

210 (1) Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law. 2006, c. 17, s. 210 (1).

Board to receive notice

(2) A person appealing an order under this section shall give to the Board any documents relating to the appeal. 2006, c. 17, s. 210 (2).

Board may be heard by counsel

(3) The Board is entitled to be heard by counsel or otherwise upon the argument on any issue in an appeal. 2006, c. 17, s. 210 (3).

Powers of Court

(4) If an appeal is brought under this section, the Divisional Court shall hear and determine the appeal and may,

(a) affirm, rescind, amend or replace the decision or order; or

(b) remit the matter to the Board with the opinion of the Divisional Court. 2006, c. 17, s. 210 (4).

Same

(5) The Divisional Court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper. 2006, c. 17, s. 210 (5).

2. *Adjudicative Tribunals and Clusters*, O. Reg. 126/10

Cluster, Tribunals Ontario

2. The following adjudicative tribunals are designated as a cluster of tribunals entitled "Tribunals Ontario" in English and "Tribunaux décisionnels Ontario" in French:

1. Animal Care Review Board.
2. Assessment Review Board.
3. REVOKED: O. Reg. 282/20, s. 2.
4. Child and Family Services Review Board.
5. REVOKED: O. Reg. 282/20, s. 2.
6. REVOKED: O. Reg. 668/21, s. 1.
7. Custody Review Board.
8. REVOKED: O. Reg. 282/20, s. 2.
9. Fire Safety Commission.
10. Human Rights Tribunal of Ontario.
11. Landlord and Tenant Board.
12. Licence Appeal Tribunal.
13., 14. REVOKED: O. Reg. 282/20, s. 2.
15. Ontario Civilian Police Commission.
16. Ontario Parole Board.
17. Ontario Special Education Tribunal (English).
18. Ontario Special Education Tribunal (French).
19. Social Benefits Tribunal. O. Reg. 494/18, s. 1; O. Reg. 282/20, s. 2; O. Reg. 668/21, s. 1.

3. *Courts of Justice Act*, R.S.O. 1990, c. C.43

Powers on appeal

134 (1) Unless otherwise provided, a court to which an appeal is taken may,

(a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;

(b) order a new trial;

(c) make any other order or decision that is considered just. R.S.O. 1990, c. C.43, s. 134 (1).

Interim orders

(2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal. 1999, c. 12, Sched. B, s. 4 (3).

4. *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

Hearings to be public, exceptions

9 (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Written hearings

(1.1) In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

Electronic hearings

(1.2) An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

(a) it is not practical to hold the hearing in a manner that is open to the public; or

(b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

5. *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60

Adjudicative records public

2 (1) A tribunal shall make those adjudicative records in its possession that relate to proceedings commenced on or after the day this section comes into force available to the public in accordance with this Act, including any rules made under section 3.

Confidentiality orders

(2) A tribunal may, of its own motion or on the application of a person referred to in subsection (3), order that an adjudicative record or portion of an adjudicative record be treated as confidential and that it not be disclosed to the public if the tribunal determines that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

Who may apply

(3) The following persons may apply to the tribunal for a confidentiality order in respect of an adjudicative record:

1. A party to a proceeding to which the adjudicative record relates.
2. A person who would be affected by the disclosure of the information contained in the adjudicative record or a portion of the adjudicative record.

Scope of order

(4) A confidentiality order may apply to adjudicative records regardless of when the proceeding to which they relate was commenced.

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6. ***Canadian Charter of Rights and Freedoms***

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

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7. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

Title of Proceeding

14.06 (1) Every originating process shall contain a title of the proceeding setting out the names of all the parties and the capacity in which they are made parties, if other than their personal capacity. R.R.O. 1990, Reg. 194, r. 14.06 (1).

(2) In an action, the title of the proceeding shall name the party commencing the action as the plaintiff and the opposite party as the defendant. R.R.O. 1990, Reg. 194, r. 14.06 (2); O. Reg. 131/04. s. 7.

(3) In an application, the title of the proceeding shall name the party commencing the application as the applicant and the opposite party, if any, as the respondent and the notice of application shall state the statutory provision or rule, if any, under which the application is made. R.R.O. 1990, Reg. 194, r. 14.06 (3).

Exception

(4) Subrules (1), (2) and (3) do not apply to a proceeding under Rule 74, 74.1 or 75. O. Reg. 484/94, s. 6; O. Reg. 111/21, s. 3.

...

Commencement of Appeals

Time for Appeal and Service of Notice

61.04

...

Title of Proceeding

(2) The title of the proceeding in an appeal shall be in accordance with Form 61B. R.R.O. 1990, Reg. 194, r. 61.04 (2).

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8. LTB Documents

TAB A

Tribunals Ontario
Tribunaux décisionnels Ontario

Access to Records Policy

1.0 Overview: Commitment to Openness

Tribunals Ontario is guided by the open court principle and is committed to transparency, accountability and accessibility in its decision-making and operations.

In general, most hearings and case files are publicly accessible, consistent with the *Statutory Powers Procedure Act* (SPPA), *Tribunal Adjudicative Records Act* (TARA), and the open court principle. The open court principle assumes that openness and transparency enhance the public's understanding of, and confidence in, the administrative justice system; and as such, the records relied on in adjudication should be generally available to the public.

In certain circumstances, access to records may be restricted by a statutory provision, common law rule, or a tribunal or court order limiting access. Most decisions and orders of Tribunals Ontario tribunals are available online for free on CanLII and in some cases on boards' or tribunals' websites.

2.0 Accessing Case Files and Other Documents

2.1 Availability of Case Files

The adjudicative records in most Tribunals Ontario's case files are available to the public on request with exceptions.

Tribunals Ontario's case files contain the adjudicative records related to a proceeding in accordance with the *Tribunals Adjudicative Records Act.* Case files may include:

- Applications, appeals, or other documents that start a proceeding;
- Notices of hearing;
- Written submissions;
- Documentary evidence;
- Recordings and transcripts of the proceedings, if any;

- Orders, decisions, and reports; and,
- Schedules of hearings and tribunal dockets.

Personal notes, draft decisions, draft orders and communications related to draft decisions/orders are not part of a case file.

Available adjudicative records may be retrieved and provided where sufficient identifying case file information is supplied by the requester. Requests must identify the specific record and related proceeding, and staff cannot conduct research on behalf of requesters. Tribunals are not able to extract, compile or aggregate data from case files. Tribunals Ontario may make caseload information and other tribunal data available in Annual Reports. Tribunal records are subject to archiving and retention schedules and may not be retrievable.

2.2 Restrictions on Access to Records

Specific statutory, regulatory, or rules-based restrictions on access may apply to boards and tribunals, including, for example, the Ontario Parole Board, the Social Benefits Tribunal, and the Criminal Injuries Compensation Board. Portions of any board or tribunal proceeding may also be closed to the public, and any reports or documents related to closed portions of proceedings are not part of the publicly available case file. Access requests may be determined by adjudication on a case-by-case basis.

2.3 Records Related to Mediation and Settlement

Mediation and settlement discussions are held to facilitate the resolution or narrowing of issues in dispute and are therefore closed to the public. Materials filed solely for the purposes of mediation or settlement discussions are confidential and are not contained in the case file.

2.4 Access to Institutional Files and Other Records

Requests for Tribunals Ontario institutional or operational records (i.e. not related to case files) may be subject to access under the *Freedom of Information and Protection of Privacy Act* (FIPPA). FIPPA sets out procedures for making requests and outlines limits to the right of access. If a FIPPA request is required, Tribunals Ontario staff will inform the requester and assist with processing the request.

3.0 Procedures for Accessing Case Files

3.1 Adjudicative Process May Vary by Tribunal

Tribunals Ontario recognizes that sensitive personal or financial information may be included in documents provided as part of a proceeding. Personal information, including names, contact information, medical, financial, employment, and education information, submitted as part of a

proceeding may become public in an open hearing, and may be contained in decisions, orders, and case files, unless an order to restrict access is made.

Access procedures may vary depending on the nature and function of the particular tribunal and may be subject to orders of the tribunal, Rules of Procedure, Practice Directions, and any other requirements imposed by law.

3.2 Timeframes for Public Access

Tribunals Ontario staff work to provide access to tribunal files and documents as quickly and efficiently as possible. However, the time it takes to provide access can be affected by various factors, including whether records are required for an active proceeding, whether they have been sufficiently identified so they may be retrieved, whether they are stored on-site and available, as well as other staff and adjudicator responsibilities and priorities.

3.3 Fees Timeframes for Public Access

Fees may be charged to search for, collect, or copy records in response to a records request. There is a fee waiver mechanism for individuals who might otherwise be denied access to justice because of their financial circumstances. Information about the fee waiver process is available on the Tribunals Ontario website or from tribunal staff.

3.4 Where to Make a Request

Parties to Active/Ongoing Proceedings should contact the Registrar's Office at the tribunal where the matter is being held for access to records related to their case files.

Non-Parties (Persons Not Involved in a Proceeding) should contact the Access to Records and Information Office to make a request via Access.TO-TDO@ontario.ca.

4.0 Confidentiality of Information in Case Files

4.1 Personal Information May Become Public

Tribunals Ontario recognizes that sensitive personal or financial information may be included in documents provided as part of a proceeding. Personal information, including names, contact information, medical, financial, employment, and education information, submitted as part of a proceeding may become public in an open hearing, and may be contained in decisions, orders, and case files, unless an order to restrict access is made.

4.2 Requesting a Confidentiality Order

Tribunals may make exceptions to the openness of hearings and case file information for important privacy interests. The tribunal will decide on a case-by-case basis if any measures are necessary to restrict access to sensitive information, and may make an order to:

- restrict public attendance at a hearing;
- restrict access to all or part of the documents filed with the tribunal;
- restrict publication of certain information; or,
- anonymize an individual's name or other identifying information in the tribunal's decision.

Individuals with a concern about privacy can request a confidentiality order. Requests for confidentiality orders should be made at the earliest opportunity. In deciding whether to make a confidentiality order, an adjudicator considers a number of factors including the nature of the information at issue, the interests of affected individuals, and the public interest in the openness of proceedings.

Additional information on confidentiality orders, including the types of orders available and the process for making a request can be found on the Tribunals Ontario website and in the tribunals' Rules of Procedure and Practice Directions.

5.0 Questions Related to Access to Records

Parties to an active/ongoing proceeding should contact the Registrar's Office at the tribunal where the matter is being held for questions relating access to records in their case files.

Other questions or concerns about accessing records should be directed to Access.TO-TDO@ontario.ca

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B E T W E E N: **ISAAC BON HILLIER and MARITZA ORTIZ** Tenants/Appellants	**and**	**MEDALLION CORPORATION** Landlord/Respondent	Court File No:

Ontario
Superior Court of Justice
(Divisional Court)

Proceeding Commenced at
Toronto

FACTUM OF THE
LANDLORD AND TENANT BO

Tribunals Ontario
Legal Services
15 Grosvenor Street, Ground Flo
Toronto, ON., M7A 2G6

Valerie Crystal, LSO# 68702G
Tel: 416-662-8257
Fax: 416-314-2379
Email: valerie.crystal@ontario.ca

Lawyer for the Landlord and Tena
Board

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