

# Riskboss Magazine

The Premier Source of Information on Organizational & Community Risk

Spring/Summer 2020

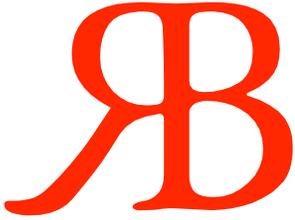
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# Riskboss Magazine

The Premier Source of Information on Organizational & Community Risk

Spring / Summer 2020: Volume 2, Issue 1

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### **Riskboss Magazine**

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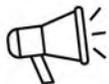
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## **Editorial Commentary**

**By Samantha Wharton**  
**Riskboss Magazine Senior Editor**

First and foremost, our thoughts, hearts and minds go out to the victims of COVID19. No family has been left unaffected by this tragedy worldwide. We hope that you, your family and friends recover from this pandemic as quickly as possible and return to normal living. Thank you to all front line emergency service workers, health professionals and caregivers for your dedication and support to our communities.

The last edition of Riskboss Magazine had yet another incredible response. We had so much input into our first edition that it helped us to expand our articles in our last edition. We heard you loud and clear that you want even more content rich information. In this edition, we have gone even further and hope you like it. Please let us know.

We have included a new section, "Legal Updates" as a result of requests for such information. This will be a regular section of the magazine from now on thank to your suggestions. We have expanded our hardcopy distribution to several property management firms who have requested hardcopies for all their managers. If you want your firm or organization to be included in hardcopy distribution, please let us know.

Now into our second year, Riskboss Magazine will continue to be published twice a year, in the spring and fall, and focus on the latest important trends regarding risk to institutions, organizations and communities. We are fully inclusive and interactive. We want to hear from you regarding your questions, concerns and ideas for upcoming articles. Our subject matter experts are ready to answer hard asked questions.

What we hope to continue to achieve in creating this magazine is to become, *The Premier Source of Information on Organizational & Community Risk.*

### **WE HAVE HEARD FROM YOU (Reader Commentary)**

**Gerry Miller**

Managing Partner, Gardiner, Miller Arnold LLP  
Toronto, Ontario

*"Finally a publication that covers all the bases. A one-stop shop for business leaders and managers too. Definitely something that I will be sending out to all my clients. Thank you."*

**Terry Ferster**

Senior Property Manager  
Residential Condominium, North York, Ontario

*"I have enjoyed reading your first two publications for sure especially the Elephant in the Room articles. Great and timely information. Can't wait for the next edition to come out."*

**Sandy Biback**

Founder of Meeting Professionals Against Human Trafficking (MPAHT)  
Toronto, Ontario

*"What is the condominium industry doing about identifying human trafficking?"*  
**SEE ENCLOSED ARTICLE**

**Property Manager (RCM)**

(Name withheld at request)  
Residential Condominium Board Member, Richmond Hill, Ontario

*"I now know how some of my owners are getting their Air B&B people into the site without escorting them personally. I will be creating a photo job system soon. Thanks very much for this. Very insightful and thought provoking."*

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## **The Elephant in the Room**

As described by Wikipedia, "Elephant in the Room" is an American English metaphorical idiom for an obvious problem or risk that no one wants to discuss." Controversial yes; however, very necessary conversation(s) here at Riskboss Magazine. In every publication, Riskboss Magazine will address the latest Elephant in the Room to clearly answer hard asked questions.

### **“He Said. She Said.”**

#### **The Legality and Prudence of Using Audio Recording with CCTV Cameras**

By Quintin Johnstone, President/CEO of Riskboss Inc.

Our most recent *Elephant in the Room* is something impacting risk and security every day. It is the debate created by some detractors regarding installing audio recording devices at security desks that augment CCTV cameras. Claims and fear of potential *Intrusions of Privacy* are most often used to dissuade against installing such devices.

Pundits and experts strongly recommend the inclusion of audio as it removes the inevitable, “He said. She said.” outcome of investigations into inappropriate behavior of security guards, realtors, tradespersons, delivery workers and even resident-to-resident interactions. Without independent eyewitnesses, investigations of this nature most often fail without audio recording devices.

This article will clarify the law on this matter and also, the prudence of installing such devices. It also hopes to answer the often-overlooked question of whether it is fair to both the alleged aggressor and/or the victim of such complaints to leave questions unanswered during investigations. Lastly, it will answer the question, “What happens if I don’t have audio?”

#### **History & Current State**

The security desk is typically the central hub and gathering point for most residential condominium communities with respect to people, parcels, deliveries, access control and community concerns. This is also the location where there is likely to be more confrontations than anywhere else.

There was a time not too long ago when even the thought of having CCTV cameras at a residential security desk would have some residents up in arms regarding their privacy and the perceived intrusiveness of such devices in their community.

Fast-forward, society has dramatically changed since ‘911’, the aftermath and the wakeup call to improved security and risk management. So to have the expectations of commercial tenants and condominium residents who demand a more secure community given the impacts of illegal short-term renters, trespassers and illegal commercial use (e.g. prostitution, illegal short term rentals, etc.). CCTV cameras are the norm now at security desks and for good reason.

Technology has advanced so dramatically in recent years that it seems like everyone has audio and visual recordings devices in the cars, motorcycle helmets, bicycles, and even home nanny-cams.

Audio and visual is available on cellular phones with a quick click of a button. Two-way communication in condominiums has been recently enhanced through the innovation of remotely monitored security kiosks that includes both audio and visual.

Society has not only accepted both audio and visual in the mainstream but in fact, in many respects it is now the new norm and society is demanding and expecting it. So the question begs, given the societal changes surrounding the increased desire for security, the technical advances that include both audio and visual recordings as a social norm, and the increased desire to enhance security and decrease risk, how do decision makers struggle with the right to privacy versus the right of commercial tenants, condominium residents and workers to be protected conundrum?

#### **One Party Consent**

In Canada, and according to the Criminal Code, only one person needs to consent to the recording of conversations. That means that if you are in any place, you do not need the permission of others present to record them. Once you leave that place, any continued recording by you of the people who remain is illegal.

#### **Expectation of Privacy & the Law**

The expectation of privacy is well rooted in Canadian law not only in the Criminal Code where the interception of private communication can lead to a five-year jail sentence for the interception of private communications but other relevant laws with respect to privacy.

For example, respecting compliance with the privacy provisions of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") on when and how such recordings can be obtained, kept, legally released and used is not only important to understand but moreover essential to abide by.

According to the Canada’s Office of the Privacy Commissioner and as set out in the, “Guidelines for Overt Video Surveillance in the Private Sector”, surveillance is a reasonable expectation in areas requiring protection and where there is no privacy expectation.

It is a reasonable expectation that in these areas, people will not only be monitored but also be heard. Clearly visible notices and signage must be displayed indicating what type of recording is being made. This has been the norm for some time.

### **Protection Against Workplace Harassment & Abuse**

The rights for the protection of workers in their workplace are very clear and well established in law in Ontario. It is a joint and shared responsibility for employers in all corporations. So is the protection against bullying and workplace harassment. The obligations of all corporations to ensure that all such incidents are dealt with properly and warning/sanctions against offenders are levied immediately is very clear. Proactively, corporations are obligated to ensure that the proper tools are in place to protect workers in their work environment.

Expert lawyer, Michael Smyth is an employment and labour lawyer in Hicks, Morley LLP in the Toronto office. Mr. Smyth explains, recordings are a particularly useful tool to help to ensure that workplaces are safely maintained.

“From an employer’s perspective, having audio and CCTV cameras in areas where there is the potential for harassment or violence makes practical sense. Such surveillance can be used to assist in maintaining a safe workplace and investigating complaints as long as privacy responsibilities have been adequately accounted for and addressed.”

According to Mr. Smyth, pursuant to Ontario’s Human Rights Code and the Occupational Health and Safety Act, condos, as employers, have a duty to provide a violence and harassment-free workplace, develop policies and programs regarding violence and harassment, investigate incidents and implement corrective measures. As it concerns recordings, Mr. Smyth goes so far as to state that, “If an employer has resisted implementing audio and CCTV recordings for fears of intruding on privacy rights, it should reconsider it in such circumstances, or risk being found liable for failing to take all reasonable steps to protect the health and safety of its employees.”

### **Is Audio Prudent at a Security Desk?**

The Prudence of Audio in Condominium Expert condominium lawyer, Gerald Miller, managing partner of Gardiner Miller Arnold LLP, points out that with the recent implementation of amendments to the Condominium Act, 1998, boards and managers are under increased pressure to utilize technology to enforce rule compliance and ensure condo security,

“Audio visual surveillance with recording capability at the security or concierge desk should become the norm in all high-rise buildings. It becomes critical that property management have audio and visual records of what exactly transpires in all circumstances in cases when an owner or tenants complains.

Similarly, when owners, tenants or guests complain about the behaviour of the concierge or security guards, the recording can verify the truth of any allegations made against the condominium corporation’s employees or contractors. This is especially true when allegations of sexual or other forms of workplace harassment are made.”

### **The Risk of Not Having Audio**

Riskboss has conducted Comprehensive and Independent Risk Assessments of condominiums, commercial buildings institutions and organizations for over ten years. Part of that assessment is to measure risk using a number of variables that identifies threats and provides alternatives and solutions to such threats.

Riskboss evaluators consider the lack of audio at security desks as a high risk that should be mitigated. The lack of audio leaves far too many unintended consequences. It leaves both the alleged aggressor and the victim without closure that in many cases perpetuates negative feelings.

Expert condominium insurance broker, Basel Kaskas, from the Paisley-Manor Insurance Group, provides a real-world example of the consequences of not including audio as part of a condo’s risk mitigation process,

“A security guard was alleged to have been careless in his duties with respect to access control to a complex. Complaints were made by residents reporting that the security guard regularly left the gate open and let anyone pass without confirming that they were a resident or invited guest of a resident. The company employing the security guard never took the complaints seriously, as no audio was available at the desk so that they could confirm any problems. During a shift, this security guard left the gate wide open and, as result, a vehicle inside the parking garage was entered and an iPad stolen. A ‘Failure to Perform’ lawsuit was filed and those involved were found liable.”

### **Conclusion**

As the experts have indicated, installing audio recording devices in high-traffic areas in buildings, and, in particular, at security desks, is very prudent and appropriate.

The question is no longer whether audio is required or not as the law is very clear on the matter. It is rather a matter of what is the impact and implications of not having it.



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# Protecting Your Biggest Asset

## Preventing Vacation Disasters

By Alex Zhvanetskiy, Vice President of Samsonshield Inc.



So you have bought the tickets, have the sun tan lotion, packed the bags, put the pets up with relatives, stopped the newspaper, got vacation health insurance coverage and now you are heading to a sunny destination for a well-deserved vacation. You have everything covered and you're ready to have a good time right? Great!

The stark and unfortunate reality is that countless true-life horror stories continue to emerge for homeowners. Vacationers are getting calls from property managers and even neighbours advising of serious issues while they are away and when they call insurers, they find that their policy has been voided. Another unfortunate trend is turning heads in lawyer, property management and insurance firms is that owners are getting calls from tenants who are reporting problems after returning from extended absences. More often than not, owners are shocked to find that tenants have not had anyone check in on the home during their extended absences.

Not commonly known is a clause in most condominium insurance policies that stipulates that during extended absences where your home will be vacant, residents must have someone check in on the property to make sure the property is okay.

**This clause is in almost all policies, yet generally it remains unknown.**

Each policy is different with respect to how often suite checks must occur and who can be designated as a competent person to conduct such visits.

Insurance expert, Basel Kaskas of The Paisley-Manor Insurance Group, a company that specializes in insuring condominiums, states that this is an area where insurance policies have unique stipulations based on the type of loss that occurs and the type of property that is insured. He advises for example that,

*"Water damage is one the biggest exposures to loss in scenarios where a residence is left unoccupied for extended times. The insurer will likely refuse to pay if the home owner does not take the proper precautions in accordance with their insurance policy."*

Water damage caused by faulty appliance piping and hoses, incorrect installation of washing / dishwasher machines, poor contracting and illegal renovations are just some of the causes of major water leaks.

In many cases, water can negatively impact multiple units underneath the source of the water. Thousands of dollars in water damage can occur in each affected condominium unit.

Mr. Kaskas further describes that,

*"Many policies include a clause that states if a residence is unoccupied for a period of time with no one checking in on the home, the policy may automatically lapse in coverage. This is why home owners should contact their insurance provider prior to travel to see if such absences are covered under their policy and what to do to make sure they are covered while they are away."*

One of the country's foremost experts in condominium law, Mr Gerald Miller was canvassed about this issue. Mr. Miller is the managing partner of Gardiner, Miller, Arnold LLP, which is one of the largest condominium law firms in Ontario. His firm deals with these issues far too often.

*"Condominium insurance is very complex. Each condominium corporation has its own insurance, each unit owner should have an owner's policy and each owner who rents out their unit should also insist that their tenant has a tenant's policy."*

*If a loss occurs, all that matters is that there is insurance coverage. We have found that the biggest losses come from water damage due to washing machine and dishwasher hose failure."*

*It is important for everyone to know what an owner's insurance policy says about closing that door to your condominium and heading to Florida for the winter or an extended vacation."*

*A typical Condominium Owner's policy provides as follows:*

**'Loss or Damage Not Insured**

*We do not insure loss or damage .... occurring after your unit has, to your knowledge, been vacant, for more than 30 consecutive days.'*

*Therefore, it is critical for every owner of a condominium unit to review their policy to determine the time frame their property can be vacant before their insurance policy excludes coverage. If your vacation plans exceed the time frame in your policy, you should contact your insurance company to determine what steps you can take to avoid exclusion or if you can purchase additional coverage. It could be as simple as having a friend, family member or a service provider monitor your unit."*

**So How Much Insurance Is Enough?**

Insurance for condominiums in Ontario is multi-layered:

- The condominium building itself is insured for:
  - ✓ The building and grounds;
  - ✓ Common areas and amenities; and
  - ✓ Standard Unit (Or the original state that the developer provided to the original owner).
- The property owner gets their own insurance for their unit, locker, parking space and for something called, *Betterments and Improvements*; and
- Tenants also get their own insurance.

The best way to ensure that you have enough insurance and the right insurance is to work with a qualified insurance broker or provider.

**Tenanted Properties**

The first step in preventing unnecessary problems with tenants starts before the tenant even takes possession of your condominium.

Here are some ideas that may assist:

- Do proper checks on potential tenants:
  - ✓ Letter of employment
  - ✓ Credit Bureau worthiness
  - ✓ Call references
  - ✓ Photo identification
- Have a proper lease that forms the basis for the tenancy including clauses:
  - ✓ Ensuring the tenant maintains insurance and provides proof (even on term renewals)
  - ✓ Instructing tenants that during extended absences to have the property checked
  - ✓ Ensuring renovations cannot be made without permission
  - ✓ That regular mechanical inspections will occur

**Action Plan**

These problems are almost always preventable. It is important that property owners understand their risk and have a plan in place to mitigate that risk.

Some service providers provide **Extended Absence Checks** that can assist in mitigating this risk. It consists of the following:

- ✓ Engaging with property management to commence the process
- ✓ Determining the frequency of the in suite checks pursuant to insurance policy requirements
- ✓ Suite entry notices will be left inside your unit to prove access reason, dates and times
- ✓ Real time documenting and benchmarking of suite entries to property owners and property management through routine reporting practices
- ✓ Real time notifications of any and all issues
- ✓ Immediate mitigation of serious or emergency issues (e.g. water leaks)

This type of plan will alleviate any concerns for residents during extended absences. It also provides expert analysis of issues that may negatively affect your property. Should it become necessary to demonstrate proof to an insurer that competent persons completed checks, contemporaneous reports can be retrieved and provided for this purpose.

This type of plan also provides an extra layer of protection for condominium corporations because a pinhole leak in a water line today can lead to a major floor very quickly. Such early intervention prevents damage to other units that are major headaches for property managers.



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# “Not in My Community”

## Condominiums & Human Trafficking

By Quintin Johnstone, CEO Riskboss

In November 2019, Riskboss Magazine received an on-line question from Sandy Biback. Sandy is a member and the Founder of Meeting Professionals Against Human Trafficking (MPAHT). Since 2017, MPAHT focuses awareness and education to human trafficking routes such as hospitality organizations and similar venues. MPAHT reports that worldwide, 21 million people are victims of forced labour that generates \$150 billion dollars in illegal profits. Of those exploited, 4.5 million people are forced into sexual exploitation. Sandy asked Riskboss Magazine a simple question, “What is the condominium industry doing about identifying human trafficking?”

Riskboss Magazine immediately reached out and promised Sandy that, despite the content being already set for this edition, we would include this additional article given the importance of the issue. When interviewed, Sandy advised that her and her colleagues are doing as much as possible to highlight what is happening.



Sandy offered the following,

“We know human trafficking is an overwhelming tragedy in our world and it seems insurmountable. If each of us becomes aware of what to look for and what to do if they see something, we can change the tide in our circle and that circle widens with each reporting.”

**“Yes. In Fact, In All Communities”**

The hospitality industry such as hotels and motels were, and still are, a safe haven for human traffickers. For example, Blue Mountain Resorts in Collingwood, Ontario fell victim to human labour trafficking. A police pre-dawn raid in February of 2019 led to the rescue of 43 victims predominantly from Mexico being used as unpaid service workers. Police called it, “*Modern day slavery.*” This incident highlights that human trafficking is not always about the sex trade and is literally in our own backyard.

Human trafficking is no longer limited to the hospitality industry. For example, on October 10, 2019 a large residential condominium community in the City Place neighbourhood of Toronto and several others around the Greater Toronto Region (GTA) woke up to their new shocking reality. Media reports told of, “*Massive human trafficking bust takes down alleged pimp kingpin in Toronto.*” Police services from York Region, Toronto and even Montreal were involved in these raids. Now stigmatized, these condominium communities that had been used for the purposes of human trafficking now have to deal with the aftermath. It was completely under the radar and, “In their Community.”

This year marks a very important time for Toronto as it culminates in years of prolonged and sustained residential condominium growth. This year Toronto will become the city with the largest number of residential condominiums in the world by volume. Shocking but true, Toronto now has more condominiums than Manhattan, Vancouver, Hong Kong, Dubai, Singapore, Miami, Rio De Janeiro, Los Angeles, London, Paris and yes, any other city in the world.

With that comes obvious opportunities for would-be criminals to capitalize on weak risk identification/mitigation processes in condominium communities that includes identifying human trafficking. Most condominium communities are ill prepared to detect and deal with such activities.

Although unregistered and illegal short-term rentals play a very big role for human traffickers, longer-term tenancies in condominiums have also been linked as a common method for criminals apply their trade. This is due in part because residents in most urban condominium communities remain anonymous to other neighbours. Anonymity in condominium communities is the new lifeblood for human traffickers. Illegal access fob copying services also play an integral role for such activities.

Reliable GTA police sources advised Riskboss Magazine that some, “Smarter-than-most” criminals actually rent three or four condominium units in the same building or in neighbouring buildings and register under different names. One to live in, one for drugs, one for guns and one (or more) for victims of human trafficking. This makes it harder to detect and definitely harder for police to obtain search warrants.

During a recent study of a large downtown Toronto higher-end residential condominium, Riskboss analysts found a common bawdy house being used and openly marketed on the Internet and unbeknownst to anyone, even neighbours. This bawdy house was being operated in two shifts with multiple Johns per day posing as building, “Visitors”. Many such operations use prostitutes that have been trafficked.

In the mid 1980’s, I was part of a Toronto Police Service Task Force called, “Project JJ” (Project Jack and Jill). Project JJ was designed to focus attention on local prostitution in a multiphase strategy of hitting John’s through enforcement but also, working with both female and male prostitutes to identify their pimps and provide these victims with much needed support. The courts and social services were also heavily involved in the project.

There have been many such successful projects around the world; however, these projects take a lot of time and resources and are largely reactive in nature. Efforts through grass route organizations such as MPAHT are highly effective through preventative education and process related measures. Such efforts are very important because it saves a lot of woman and men from the tragic outcomes of sustained abuse, and quite often before it occurs in the first place.

The City of Toronto recognizes human trafficking as a very real concern. On June 18, 2019, City Council adopted the report that outlines a number of actions that the City proposes to take, in collaboration with other agencies, corporations and divisions to support survivors of human trafficking. Other cities local and worldwide have taken similar stances on human trafficking.

Probably the most knowledgeable person about human trafficking is Gary Ellis, PhD. Currently Dr. Ellis is the Program Head for Criminal Justice Studies at Guelph, Humber University, in Toronto. He is a retired Superintendent from the Toronto Police Service, having served as the unit commander of the Homicide Squad and the Sex Crime Unit among other units. I first met Dr. Ellis when we both worked in Toronto Police Service in downtown 52 Division walking the Yonge Street beat together. Downtown Toronto was a much different place then.

In 1981, Gary was awarded by the Toronto Board of Trade with the prestigious Police Officer of the Year Award for repatriating a young victim of human trafficking with her family in British Columbia. Dr. Ellis had an incredible early start to his life-long passion to bring to light the human trafficking plague on society. Gary routinely travels around the world to provide sage advice to governments, police organizations and other institutions and is a regular guest speaker on the topic.

According to Dr. Ellis,

“Human trafficking takes on many forms that includes forcing others to work in forced labour to the sexual abuse of all ages, genders, races, and cultures; including child abuse. The bottom line is it is slavery forced on the most vulnerable in society who are made to do unimaginable things against their will. This is not only a Toronto issue, it is a global humanity issue that is being enabled by modern technology. Those who benefit from this are by definition very often organized criminals, through low level opportunists also will force others into this lifestyle.

Toronto, being a global city, and a refuge for the most vulnerable, has unfortunately become one of the hubs of human trafficking. In many ways it has become *‘our hidden crime-our hidden shame.’* Condo’s, as has been mentioned in this article, have become a common venue where the activities surrounding human trafficking take place.

Vigilant and aware management, informed and caring security, and the condo dwellers/owners’ interest in protecting your community and your investment are a good start to doing the right thing. This article makes some helpful suggestions and gives you tips on how you can be part of the solution.”

The cure to the long-lasting world-wide problem of human trafficking is not a one step or fast solution and police cannot be the sole source as the cure. It requires a lot of effort through multiple channels to address the issue. It is clear that condominiums have become the latest another safe haven for human traffickers. Clearly, organizations directly and indirectly involved with such communities need to focus their energy and be alert to this problem. Adding condominium community service providers and associations to the long list of organizations fighting human trafficking will go a very long way to help.

The discussion will not end with this article and neither will the problem. Riskboss Magazine hopes to assist by providing some help to Board members and property managers who govern condominium communities by way of effective tools that will assist in early identification and prevention of human trafficking.

Using the following step-by-step guide will assist:

- ✓ Build robust Condominium Building Rules that assists to govern resident behavior and that holds landlords accountable for tenancies
- ✓ Ensure all residents of suites are registered prior to occupation and prior to receiving access fobs
- ✓ Ensure all site access fobs are registered specifically to individuals
- ✓ Conduct annual fob audits
- ✓ Use a Illegal Fob Copy Prevention Program (A Photo-to-Fob System) highlighting real time use of illegal access fobs and when fobs are being used by unregistered residents
- ✓ Hold landlords accountable for providing proper leases, tenant insurance and identification prior to allowing access to service move-in elevators and prior to activating access fobs
- ✓ Deactivate all access fobs with residents move out immediately
- ✓ Engage resources to conduct a weekly on-line vulnerability analysis regarding unregistered and illegal short term rentals
- ✓ Create a robust plan for dealing with unregistered/illegal short term rentals
- ✓ When conducting in-suite HVAC and fire alarm inspections, ensure staff are well trained in identifying telltale signs of human trafficking and other criminal activity
- ✓ Ensure all condominium service providers receive training on human trafficking awareness
- ✓ Have security report any unusual frequency and high volumes of unfamiliar, “Visitors” to suites
- ✓ Have local police attend and present a Community Safety Town Hall Meeting educating residents
- ✓ When observing something unusual, document it, back up CCTV footage and report it to police or Crime Stoppers immediately

In short, get involved, be involved and remember, if something doesn’t meet the smell test, it usually means a lot of trouble is coming your way down the road in the future. Sandy has some sage advice for those who want to help,

“If you see something, say something. If you are wrong, that that is okay. If you are right, you can save a life. I think the other important thing is that people need to understand that every little bit of awareness helps.”

As a starting point, attend one of the local events for MPAHT Awareness. Regularly held events can be found [www.mpaht.com](http://www.mpaht.com).

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## **Would you know the signs?**

Meeting Professionals Against Human Trafficking (MPAHT) is a Toronto-based organization formed to create awareness and dispel the myths surrounding human trafficking in Canada in the event industry. Focusing on collaboration and education, MPAHT is driving the conversation on human trafficking that may be taking place at events and through allied partners including hotels and airlines. The ultimate aim for the volunteer-based organization is to provide awareness and resources for the meetings and conference industry at large.

***Identify the signs, visit [www.mpaht.com](http://www.mpaht.com)***



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# Zero Tolerance

## Workplace Bullying and Harassment Obligations: Myth vs Fact

By Dawit Kiflu, Operations Manager at Samsonshield Inc.



According to Wikipedia,

“**Workplace harassment** is the belittling or threatening behavior directed at an individual worker or a group of workers. Researchers report that it is becoming one of the most sensitive areas of effective workplace management, because a significant source of work stress is associated with aggressive behaviors at workplaces. Under occupational health and safety laws around the world, workplace harassment and workplace bullying are identified as being core psychosocial hazards. Overbearing supervision, constant criticism, and blocking promotions are all considered workplace harassment.”

I would venture to say that there is no one that hasn't either has been a victim of, or at least has witnessed some sort of workplace harassment. If there is such a person, I am yet to meet them. This is a bold statement but research reveals how prevalent this problem is worldwide.

This article will outline many misconceptions regarding obligations regarding workplace harassment and provide some clear guidance on what is required under Ontario law.

I am fortunate that I work for an organization that has very clear standards on workplace harassment and operational procedures that are cutting edge on how to deal with this problem when it happens. Some of my peers in other companies are not so lucky. I have heard the horror stories about a lack of action and other stories about when inappropriate action is taken how it leads to unintended consequences.

### Workplace Harassment Defined

In Ontario workplace harassment is administered in Ontario by the Ministry of Labour through the Occupational Health and Safety Act. Workplace harassment is defined as,

Harassment is defined as *engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.*

The following are some of the misconceptions that are very common and the facts that debunk these myths:

#### Myth:

Workplace harassment can only be about unwanted sexual advances or have some violence associated with the behavior.

#### Reality:

Incorrect. Workplace harassment also includes a number of behaviours that constitute a violation of Ontario law. Workplace harassment includes, but is not limited to the following examples: offensive comments or jokes; bullying or aggressive behaviour; inappropriate staring; sexual harassment; and isolating or making fun of a worker because of their gender identity. Incidents of discrimination based on one of the fourteen prohibited grounds according to the Ontario Human Rights Code may also apply. It can be verbal, written and even by act or gesture. Some behaviours may even be contrary to the Criminal Code of Canada.

#### Myth:

If workplace harassment is witnessed but the victim doesn't complain there is really nothing anyone can do about it. **Reality:** Incorrect. While victims of workplace harassment have the right not to complain, there is a clear obligation under law that such behavior must be investigated, documented and intervention options must be engaged as soon as possible.

#### Myth:

Workplace harassment can only occur in the workplace and no other place.

#### Reality:

Incorrect. This is a very common belief; however, workplace harassment can occur outside of the actual workplace if the harassment is work related. Comments and/or actions that are attributed to work by workers or supervisors can occur anywhere.

#### Myth:

If an employee goes off work for stress related to workplace harassment, there is no need to report it to Workplace Safety and Insurance Board (WSIB).

#### Reality:

Incorrect. WSIB often applies depending on the circumstances. It is better to contact WSIB or legal counsel to determine whether WSIB applies or not as soon as possible as timelines apply.

#### Myth:

Employers don't have any obligations regarding workplace harassment until an incident actually occurs.

#### Reality:

Incorrect. By law in Ontario, all employers must have a workplace harassment policy in place and review it every year. Employers must also train all employees on how to make complaints and what will happen when a complaint is made. Employers also have to create and maintain a program in consultation with a Joint Health and Safety Committee.

**Myth:**

There has to be a series of events for workplace harassment to apply and be investigated.

**Reality:**

Incorrect. It often occurs in a series of events but a one-time incident can constitute workplace harassment.

**Myth:**

There is a time limit to report incidents of workplace harassment.

**Reality:**

Incorrect. There is no Statute of Limitations such as the case in many jurisdictions similar to the United States. There is a time limit for Ontario Human Rights Code incidents that is one year from the date of the last incident. There are no time limits for criminal offences in Canada. Regardless, all incidents of workplace harassment must be investigated immediately and all evidence gathered after a complaint is filed.

**Myth:**

Workplace harassment investigations can be conducted by anyone.

**Reality:**

A sure way to get yourself and your company into major trouble is to have a workplace harassment investigation conducted by someone without the knowledge, training, skills and ability to do the job properly or by someone who is involved. The first step to any investigation is to secure all short-term evidence and contact legal counsel immediately. Lawyers often hire private investigators that are experts in this field to conduct investigations thereby ensuring objectivity and independence. This is highly recommended.

**Myth:**

In a group situation if someone tells an improper joke that breaches one of the fourteen prohibited grounds found in the Ontario Human Rights Code and every laughs, there is no offence committed.

**Reality:**

Incorrect. This is a classic example of not knowing who the victim may in fact be. Such behavior is intolerable in any workplace and allowing it to continue provides a breeding ground for poisoned work environments. No one can, 'opt out' of responsibilities found in workplace related law.

**Myth:**

Those engaged in workplace harassment will be fired if anyone complains.

**Reality:**

Incorrect. There are many balanced and fair resolutions that can be imposed on offenders that do not include termination of employment. Cases of workplace harassment are victim driven, meaning that the victim has a lot to say about how the process will unfold. Informal resolutions are very often used to resolve cases.

**The Bottom Line**

No one should suffer in silence. There are numerous organizations that can assist both with reporting incidents of workplace harassment and for the recovery and support of victims.

All companies should have a program designed to assist victims of workplace harassment. Having a company policy in place that offers victims of workplace harassment a session with a registered psychologist specializing Post Traumatic Stress Disorder (PTSD) or Vicarious Trauma helps to minimize the long lasting negative effects of such behaviour. It also sends a strong message of support to all workers.

The solutions to workplace harassment take organizational maturity, leadership, courage and strength. Every organization should have a *Zero Tolerance Policy* for incidents of workplace harassment. Knowing your rights and what to do about such behavior actually makes organizations a lot stronger. For further information on workplace harassment there are many on-line resources found in various Ontario government websites.





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## Legal Updates

### Turning Down the Volume on Nuisance Noise

#### The New City of Toronto Noise By-Law

By Quintin Johnstone, CEO Riskboss

Following several years of consultation with stakeholders, on October 1, 2019 the City of Toronto launched an updated Noise By-Law, the first major revision to this By-law in many decades (Toronto Municipal Code Chapter 591, Noise). The new By-law dramatically changes the landscape for noise issues in Toronto. For decades there was a core qualitative and subjective element that was the predominant feature in the old By-law, but now this has been replaced with an overreaching quantitative and objective component. According to City officials the new By-law, “Brings clarity and consistency to the process.”

The old By-law relied heavily on a complainant’s own perspective and version of the events that was hard for authorities and the courts to enforce.

The new By-law relies upon fact-based evidence that is independent such as measurements gathered and captured on sound meters by City officials.



Similar to the old By-law, the most restrictive provision of the new By-law applies (Section 591.2.10 refers) **but** unlike the old By-law, unwanted noise must be, “**Unreasonable and Persistent**” before action can be taken by City officials.

The new By-law defines unreasonable as,

"Any noise that would disturb the peace, rest, enjoyment, comfort or convenience of a reasonable person in the circumstances. Unreasonable noise does not include commonplace household or workplace sounds such as sound from furniture being moved, children playing or people engaging in conversation,"  
[Excerpt: [www.toronto.ca](http://www.toronto.ca)]

It also defines persistent as,

“Any noise that is continuously heard for a period of ten minutes or more or intermittently over a period of one hour or more.”

So for example, if a neighbour’s dog is barking, City officials will not act unless there is proof of it being an ongoing concern (Persistent). This means that keeping a record of dates and times is essential before lodging complaints. Using building resources such as security for independent verification and documenting of all noise complaints is still an absolute must as a starting point to be followed up by property management later.

The new By-law also relaxes the old restrictions for bars, restaurants, nightclubs, concerts, and fitness facilities, etc. that project noise that may affect residential properties so long as decibel levels are kept in check and are within allowable limits under the new By-law. There are different decibel levels before and after 11pm daily for amplified sound. This is a substantial change from the old By-law that had an absolute zero tolerance on any noise that may affect residential neighbourhoods.

So for example, under the old By-law if a restaurant had outside speakers, noise could not project past the property line if any residential property or any resident may be affected.

Under the old By-law it was simply a matter of whether a resident could hear anything regardless of the decibel level and in the subjective opinion of a resident, the noise was found to be disturbing. The new By-law does create greater controls for construction in that it eliminates, for example, the exemption for continuous pouring of cement outside of permitted hours that impacts the quality of life for residents in neighbouring buildings. Given the level of construction growth in Toronto, this is a very positive step in the right direction. The new By-law maintains the old timelines that allows noise from construction from 7am to 7pm Monday to Friday and 9am to 7pm on Saturday with Sundays and holidays remaining as an absolute prohibition.

Exemptions under the new By-law follow the same procedure as the old By-law in that after an application is received, the local City Councillor gets involved to determine whether it is in the best interests of the local community to hold noisy community events. If allowed, City inspectors attend to keep watch using sound monitoring devices.

The new direction by the City has moved the responsibility of dealing with noise complaints away from the traditional response by police. There has been a prolonged erosion of the ability of police to attend noise complaints given the sustained reduction in personnel resources and higher calls for service as the City grows. The courts have been long overwhelmed dealing with charges under the old By-law that burdened the system to overcapacity.

The City has hired a new team of By-law Enforcement Officers from the Municipal Licensing and Standards Division (MLS) to replace the more traditional responses to noise issues. It is reported that this team will be available to respond to noise complaints from 6am to 2am daily, weekends included. Noise complaints will now be centrally channeled, analyzed and serviced through the 311 system.

Media reports; however, reveal that the new MLS team is far less than effective has been verified. An online source who complained about a loud house party received the following response from the Toronto 311 system,

“A service request can be submitted for investigation by MLS, however noise complaints are assigned to an office **within 5 business days - we don't send bylaw out as the noise is happening.** It's best to start a service request with us, and call Toronto Police.”

[Excerpt: City of Toronto 311 System]

[Emphasis added]

As it appears, police are still the only source for help in real time but that is if police resources are not stretched beyond capacity at the time of calling as noise complaints hold one of the lowest priorities for calls for service. That means that residential condominiums must rely more heavily on security resources to independently verify and document noise complaints because simply put, the police cannot be expected to, and highly likely will not, attend those calls any more.

It is clear by the City of Toronto website related to the changes to the noise By-law that there is a new direction that asks all City residents to be tolerant and reasonable. The new By-law even goes as far as to recommend attempts at direct intervention by affected parties and community based services prior to escalating to the authorities. Enforcement action by the City may include education and mediation before charges are laid.

One of the most notable components of the new By-law is that maximum fines have increased for, “Unreasonable” noise violations from \$5,000 to \$100,000.

“Toronto is a growing, vibrant city, where noise can be common. We encourage residents to exercise a reasonable degree of tolerance and to review the bylaw regulations by type of noise (found below) prior to submitting a service request. If you have a concern, consider speaking with those responsible for making the noise to give them an opportunity to correct the issue. If this approach does not work, you can call 311.

The City has partnered with St. Stephen's Community House, an organization that provides free community mediation services to Toronto residents, as an alternative means to resolving a dispute with the help of neutral mediators. Mediation can help deliver better service, divert some cases from bylaw enforcement, and get to the root cause of long-standing community or neighbour-to-neighbour issues. The process is separate from bylaw enforcement and completely confidential.”

[Excerpt: [www.toronto.ca](http://www.toronto.ca)]

According to many, it takes away the, “Grey area” of the past law that was the source of a lot of frustration by complainants, offenders and officials alike. According to representatives from the City, the new By-law with the new enforcement team will provide Toronto with enforceable objective tools and analytics that will weed out the worst offenders.

All in all, this change was inevitable and frankly long overdue given the highly ineffective, traditional and punitive model that drained police and court resources. It is yet to be determined how this relatively new By-law will impact condominium lifestyles and likely it will take some time before case law makes its way through the courts to further determine its overall effectiveness.

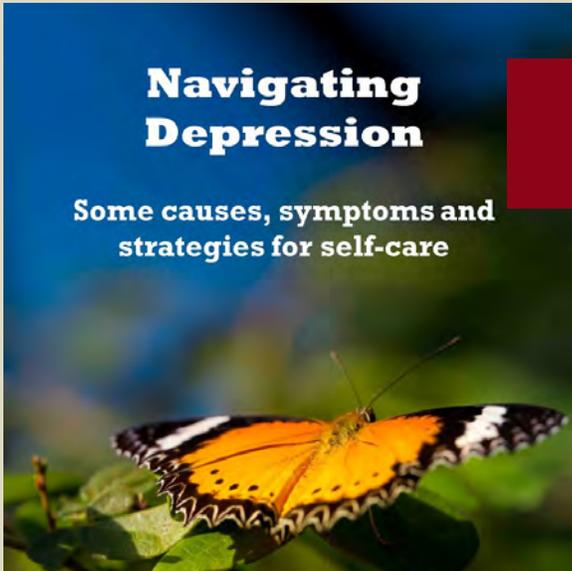
For information on how to challenge nuisance noise throughout the GTA and in your community contact us for our recently updated White Paper entitled, “**Turning Down the Volume**”.





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# Toronto History

## Toronto's Hockey Hall of Fame

By Toronto Historian and Local Expert Tour Guide Bruce Bell

Founded in Quebec in 1818, no bank was more powerful in early 19th century Canada than the Bank of Montreal. However, it wasn't until 1841 when the Act of Union was passed uniting Upper and Lower Canada that the bank was allowed to enter Ontario.

After a few unimposing Bank of Montreal branches were set up in Toronto, by 1886 construction began on what was going to be the most luxurious and stunning building in the city. When completed in 1888 the new Bank of Montreal on the North West corner of Front Street West and Yonge Street built by the firm Darling and Curry was not only one of the most elaborate structures in the city, but its interior was considered the finest banking hall on the continent.



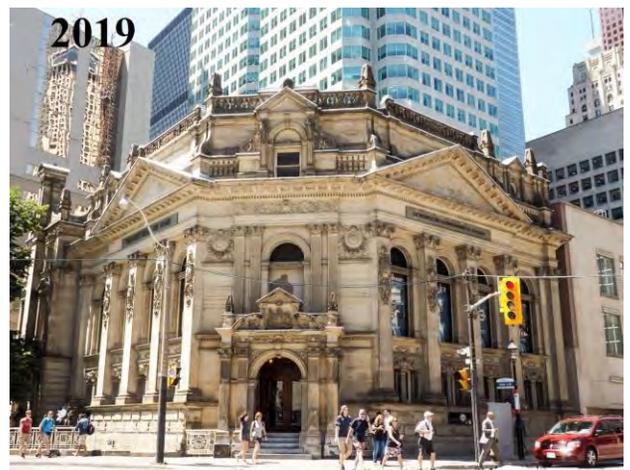
Carved onto the South side exterior are emblems to Commerce, Music, and Architecture and on the east side crests to Industry, Science, and Literature. And to top this whole Olympus styled experience off, a statue of Atlas representing strength and sport is poised outside as if holding the building up.

But it's the stained-glass dome that is the true architectural treasure of the former bank designed and set in position in 1885 by the Toronto firm of Robert McCausland Ltd. Robert McCausland Ltd also did the magnificent stain-glass window depicting the Last Supper above the altar at St James' Cathedral on King Street East.

The Bank of Montreal building miraculously survived the chaos of Urban Renewal of the 1950's and 60's when everything else around it was being unceremoniously bulldozed into the ground. However, its once brilliant exterior was covered up, painted over and 'modernized' and its future was in danger.

Its rescue came on June 18, 1993 when the new Hockey Hall of Fame opened its doors inside the former Bank of Montreal building. After a phenomenal remodeling job, the rich wood paneling, the detailed murals and exquisite gold leafing once again shone through and you don't have to be a hockey fan to enjoy this magnificent architectural treasure. The merging of hockey and history all comes together in one truly magnificent setting.

The ground floor is chocked full of memorabilia, everything from the heroic Jacques Plante's first goalie mask to a re-creation of a Montreal Canadiens dressing room to what seems to be every puck, every stick every coin that was ever used in one legendary game or another.



But as cherished and revered as these icons of the sport maybe, they bow to what lay ahead. At the very center of the hall beneath a magnificent stained glass dome is displayed the greatest collection of trophies in the sports world, including the Vezina, Hart, Selke, and Calder Cup.

But as treasured as they may be it's another icon that stands at the heart of this entire complex that people come from all over the world to see, hockey's most famous and desired prize The Stanley Cup.

With sunlight streaming in and dispersing over the deified Stanley Cup the former banking hall now attracts 500,000 visitors a year.

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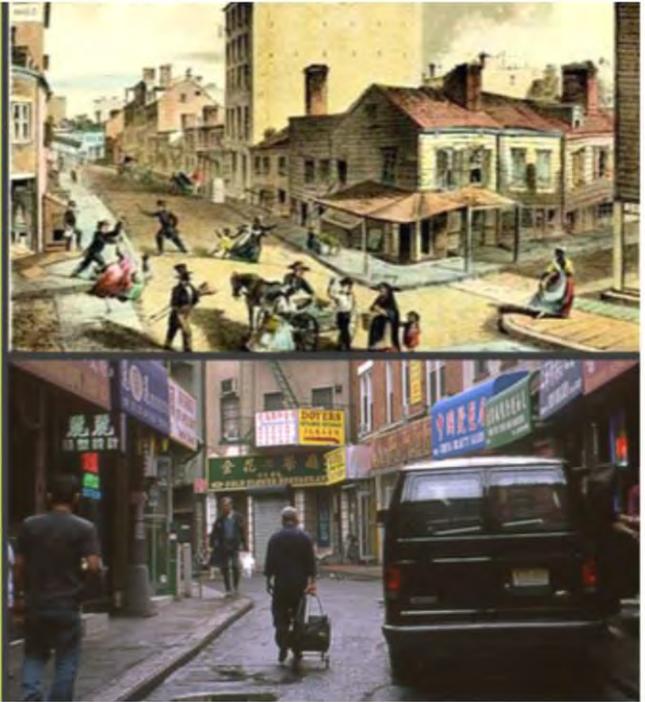
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## ***Ask Riskboss***

***Straight Answers to Hard Asked Questions***



### **Question from a downtown Toronto condominium Board member:**

**Q:** I am new to your magazine but I want to say that it is very informative. I have been a Board member for a high-rise condominium in downtown for the past five years. I thought I had a good grip on what was happening in the condo industry as I have taken many courses and try to keep up with things and I read a lot. Our Board decided to change cleaning services, as we were not happy with the current provider. When the property manager put out a request for quotes we didn't get any responses. Not one. We now find out that our current provider is unionized with a so called, "Aggressive union" and that any new cleaning company that comes in to replace the old one has to become unionized with that same union even if they are not unionized. Our property manager says that this is the new law. I have never heard of it. Can you help shed some light on this for me please? Thank you.

**A:** Yes your property manager is absolutely correct and you are not alone in your frustrations. In a nutshell, Section 69.1 of the Ontario Labour Relations Act binds residential condominiums when changing service providers. The law was changed by the Liberal government and became effective in January 2018. They used similar wording that the Bob Rae NDP government used when he was in power in Ontario. This wording has dramatically changed the landscape of how buildings change service providers as the Collective Bargaining Unit of the outgoing company is maintained at the building that any new service provider must abide by. When the NDP government enacted this law, it was overturned by the newly elected PC government shortly after. To date, the current Ontario government has not changed this legislation. We wrote about this very topic in our Spring/Summer 2019 edition of Riskboss Magazine. Please visit our website archives section for a very detailed analysis of why the law changed and what the new law prescribes when changing service providers.

Contact Riskboss for complimentary notifications of upcoming Riskboss Alerts and keep informed about important issues facing communities and organizations.

**Got a question?**

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