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Other areas of practice include estate administration and disputes, property law disputes and employment law issues.

## **The Potential Growing Liability for Condo Corporations and Dog Attacks**

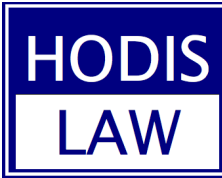
By Sonja Hodis

An Ontario Superior Court of Justice decision released in February 2014 highlights the potential growth in liability for condominium corporations when it comes to dog attacks which occur on condominium property.

In *Elbaum v. York Condominium Corporation No. 67, etal* [2014 ONSC 11 82 \(CanLII\)](#), YCC 67 attempted to bring a pre-trial motion dismissing the plaintiff's (Elbaum) claim against the condominium for damages sustained as result of a dog attack on common property on the basis that there were no grounds in law to sustain such a claim. The judge dismissed the condominium's motion and held that the issue of the liability on the part of the condominium under the *Dog Owner's Liability Act*, the *Occupier's Liability Act* and common law will proceed to trial for a determination as to whether or not YCC 67 met the duty of care imposed by the *Occupier's Liability Act* or the common law in relation to negligence and whether the condominium is a "harbourer" of the dog under the *Dog Owner's Liability Act*.

Elbaum, a unit owner was walking on common elements when another condominium owner's dog which was unleashed and running free allegedly attacked her causing her to fall and sustain injuries. The condominium corporation posted signs that dogs were to be leashed under their bylaws. Elbaum sued the resident and dog owners under the *Dog Owner's Liability Act* and sued the condominium corporation for common law negligence and under the *Occupier's Liability Act*.

Elbaum alleged that the condominium was negligent because it failed to take reasonable steps or any steps to ensure that persons are reasonably safe while on common elements, that dogs are kept on a leash, and that owners control their pets while on common elements. Elbaum also alleged that the condominium corporation failed to create and or adequately enforce rules the would require that dogs are kept on a leash and that unit owners control their pets at all times when on common elements. In addition, Elbaum alleged that the condominium corporation failed to monitor, supervise and maintain the premises in such a manner to keep aware of dogs on the common elements that may pose a danger to persons on the common elements.



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Although we don't yet know the final decision from the Court on the issue of the condominium corporation's liability in these circumstances<sup>1</sup>, there are a few lessons we can learn from the allegations made by the unit owner with respect to the condominium's liability. Now is a good time to review your Declaration, Bylaws and Rules to see what your condominium has put in place with respect to dogs or pets generally on the common elements. Do you have a rule that requires pets to be leashed and controlled at all times while on common elements? How do you communicate that rule? Are signs posted or notices distributed? Are you consistently enforcing that rule? Have you kept records to show how you have been enforcing that rule? Does your Declaration, Bylaws or Rules have an indemnity provision that would require owners to indemnify the condominium corporation if personal injury or property damage result from the breach of such rules or as a result of any actions by a pet? These are a few steps that a condominium corporation can take now to better protect themselves against such claims until we finally hear from the Court on the steps a condominium corporation is expected to take to meet the standard of care found in the *Occupier's Liability Act* and under the common law when it comes to pets on common elements.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario.. She advises condominium boards and owners on their rights and responsibilities under the *Condominium Act, 1998* and other legislation that affects condominiums such as the Human Rights Code. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja has also gained recognition for creativity and tenacity in ground breaking human right caselaw in the condominium industry. Sonja can be reached at (705) 737-4403, [sonja@hodislaw.com](mailto:sonja@hodislaw.com) or you can visit her website at [www.hodislaw.com](http://www.hodislaw.com) or watch her videos at [www.condoinmotion.com](http://www.condoinmotion.com).

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<sup>1</sup> As of February 2017, there is still no record of a Court of Appeal decision on this issue and it is unlikely that the appeal proceeded. There is also no trial decision so it is likely that the matter settled without a court decision. However, the lessons learned from the motion in 2014 are still valid considerations that condominiums would be wise to learn from.