

Hockey Night in the Condominium, Part II



BY ERIC SAVAS

IN HOCKEY NIGHT in the Condominium Part I, Robert and Janice Smith, unit owners in an Oakville condominium complex, complain to the parents of 14-year-old Bradley Tanner and 13-year-old Joey Courtland as well as the condominium corporation's board of directors about Bradley and Joey playing hockey in the common element roadway in front of their home.

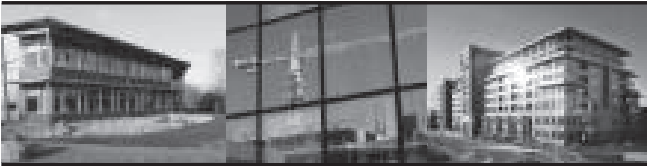
The Smiths assert that the boys are breaching the corporation's rules that require the roadways to only be used for egress and ingress and preclude nuisance behaviour. They also say that the pucks the boys shoot back and forth are putting their property at risk of damage. In this final

installment of Hockey Night in the Condominium, the corporation's board of directors takes action and Bradley and Joey's parents respond.

In October 2013, Sandy Keeton, a property manager with over 25 years' experience, arrived at her office to learn from her office's receptionist that there were some owners in an Oakville condominium she managed waiting to see her. The receptionist whispered to Sandy over the phone, "It's Robert and Janice Smith ... and I'm not sure what the problem is but they are really mad."

Sandy groaned as she replied she would step into the reception area to see the Smiths. Sandy knew the Smiths all too well. In managing

their condominium complex for several years, Sandy had received lots of phone calls and letters from the Smiths complaining about all sorts of things, including noisy neighbours, barbecues that made too much smoke and dog droppings on their lawn – just to name a few things. When Sandy entered the reception, Janice and Robert almost leapt up to Sandy's face. "Sandy, what is going on in front of our unit is absolutely unacceptable and we insist you and the board take action immediately!" exclaimed Janice. Sandy politely and professionally replied, "What seems to be the problem?" At that point, Robert jabbed Sandy with an envelope. "Read this and do something



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about this right away, or we will,” said Robert, at which point he and Janice spun around and marched out of the office.

Sandy, clutching the envelope, returned to her desk and briskly removed its contents. In the envelope, she found a letter the Smiths had written to the board and herself, as well as letters that they had written a day earlier to their neighbours, the Courtlands and the Tanners. She also found several photographs of two young boys who Sandy immediately recognized as Bradley Tanner and Joey Courtland. The photos showed the boys holding hockey sticks in front of hockey nets that were on the common element road between their homes. There appeared to be something scrawled on each of the photographs in thick black ink. It appeared to say, THIS IS ILLEGAL! WE HAVE RIGHTS!!

The letter to Sandy and the board stated in part, “We insist that the board take action immediately to enforce the rules so as to protect our property and our property values. Playing sports in the roadways is absolutely prohibited by our rules and is clearly a nuisance activity which our rules do not tolerate.” Sandy continued to read, feeling an approaching stress headache. “If the board does not enforce the rules, we are prepared to hire a lawyer and sue the condominium for failing to uphold the rules. And we will ask the court for every penny we spend on our lawyer.”

Sandy picked up the phone and called the board president, Peter Hernandez, a 39-year-old executive working on Bay Street in Toronto who happened to have two hockey playing sons as well. “Peter, I am sorry to trouble you at work but the Smiths were in my office this morning and this time they are complaining about road hockey in front of their unit. I think we will need to address this at next week’s board meeting.” There was a long pause before Peter said, “Road hockey? Are they out of their minds?” Sandy was unsure of her response. “Uh, Peter, I know it’s kind of un-Canadian and everything but I think we have to look at this as a board – maybe I should call

the lawyer.” A longer pause ensued before Peter fired, “Sandy, are you crazy? I don’t care what the Smiths have to say about this or what our lawyers might have to say. It’s road hockey! What is our complex coming to if a few kids can’t play some hockey on our streets? For God’s sake Sandy, I am out there practically every night shooting tennis balls with my boys. I am not going to tell them ‘sorry boys, no hockey allowed outside.’ Sandy started to reach for the Advil on her

desk, “Let me get the lawyers to take a look at this.”

The following week, Sandy and the board met at Peter’s unit for a regularly scheduled meeting. The last item on the agenda that evening was entitled, Sports in the Common Roadways. Sandy started the discussion by referring to the opinion letter the board had authorized and she had received from the corporation’s counsel when Peter interrupted, “Sandy, before you get into this opinion, I



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just want to say that the Smiths have gone door to door to informally poll the neighbors about hockey in our streets. I learned this from my neighbour Ross, and he said a bunch of people in the complex are apparently siding with them.”

At this point, Vice President Jonathan Dredger added, “last night, I got a call from some reporter with the local paper, the *Oakville Beaver*, and he said he had been contacted by the Smiths. He asked me: is it true that your complex does not allow kids to play hockey on the street?”

Sandy steered the discussion toward the opinion letter. The lawyer referred to rules 6 and 15 in the condominium’s rules as appearing to be relevant. Rule 6 stated, “the common area roadways are to be used only for the purpose of ingress and egress and no other purpose”. Rule 15 stated, “no resident shall carry on any activity or permit any condition to occur in the units or the common elements that is a nuisance for the residents of the complex. The board of directors shall in its sole discretion determine whether the conduct of the resident amounts to a nuisance.”

The opinion letter indicated that rule 6 appeared broad in scope and appeared to only permit use of the common roadways for entering and exiting the units and no other purpose. On its face, the rule would appear to prohibit road hockey. As for rule 15, the opinion letter stated that it was debatable whether the hockey being played by the boys rose to the level of nuisance activity. The opinion letter also mentioned that in the absence of pucks, it was unlikely road hockey with tennis or similar type balls could be considered a violation of the *Condominium Act’s* prohibition of activities on the common elements that were likely to cause damage to property or harm to persons. The letter closed with an indication that the condominium had an obligation to take reasonable steps to ensure compliance with rule 6 of the condominium’s rules. In such a dispute, because the compliance related to the rules, the condominium would be bound to submit the disagreement to mediation and (if

necessary) arbitration, if the Courtlands and Tanners did not comply.

Some heated discussion ensued amongst the board members with Peter appearing the most heated. “Folks, if we cannot have our kids playing in front of our homes what kind of place will this be for young families?” Jonathan Dredger was unmoved. “Peter, we all want this place to be family friendly but the foundation of this community has to be based on a respect for our rules.” Peter shot back, “What rule Jonathan? We don’t have a rule that says hockey is not allowed. Our lawyers seem to be reading into this rule that ANY sports on our roads are not allowed. Doesn’t that seem a bit too much?”

At this point, Treasurer Janet Wright, who had sat quietly, inter-vened. “The last thing I want to see is a child hit by a car while playing hockey on our roads under my watch as board member.” Peter started to raise his voice, “Where do we draw the line guys? Hockey is out? Basketball is out? Playing catch is out? Standing and chatting with my neighbour on the road is out?” Sandy saw her opportunity. “All valid points folks, but the bottom line is you have a legal opinion here and as board members, you’d be probably unwise to not follow it.”

Sandy was relieved to see the board resolve to request the Tanners and the Courtlands’ compliance with rule 6. The following day, Sandy, in accordance with the board’s instructions, directed a politely worded yet firm letter to the families requesting their cooperation.

Approximately one week later, another envelope landed on Sandy’s desk. It was from the Courtlands and the Tanners addressed to the board and a document containing a bunch of signatures entitled “Requisition for Meeting of the Owners.” Scanning the signatures she recognized most if not all the names. Adding up the signatures quickly, Sandy realized they accounted for well above the *Condominium Act’s* 15% threshold for calling an owners’ meeting. In examining the requisition document, it stated, “We are requesting a meeting with the board and our

fellow owners to repeal rule 6 and replace it with the following rule: “the common roadways may be used for any reasonable purpose including sporting activities so long as they do not (i) unduly interfere with ingress and egress from the units and (ii) pose an undue risk of harm to persons and property.”

A month later, Sandy arrived with the board at the Meeting of the Owners convened in accordance with the Requisition. Over 90% of the owners attended in person. The rest of the owners attended by proxy. Sandy had never seen a full turnout at this complex before and marvelled at the power hockey apparently had in bringing all the owners into a single room.

The meeting ran close to two hours with passionate debate for and against the proposed rule. A vote was called. The votes were tabulated. In the back of the meeting room, Bradley Tanner and Joey Courtland listened quietly, wearing their Oakville Rangers hockey jackets and winter hats.

Sandy announced the results and then immediately lost sight of the boys as they scurried out of the meeting room high-fiving on their way out.

Sandy drove home that evening slowing her vehicle as Bradley yelled to Joey, “CAR!!!” while moving his hockey net to the curb to allow Sandy to pass the boys. Sandy slid her window down and winked at the kids, “Keep them tennis balls low boys – and Go Rangers.” ♦



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