



## Requisition to Remove Directors - Defamation

By Denise Lash on December 21, 2010

Owners who take part in signing a requisition to remove a director should be carefully reviewing what they sign or they may be finding themselves involved in a lawsuit where they could be held personally liable.

This was the case in a recent Small Claims Court decision, Swan v. Goan, involving a requisition to remove a director and the commencement of five separate claims by the President of the board against two other board members, the condominium corporation and the property manager.



The requisition to remove the President listed the following reason for his removal:

*"failure to act honestly and in good faith, and failure to exercise the care, diligence and skill that a reasonably prudent person would exercise in the circumstances."*

These words come directly from the director's Standard of Care provisions in Section 37(1) of the *Condominium Act*.

The defendants stated that the requisition wording were expressions of their opinion, fair comment, and were made without malice. It was noted that the President did the following:

1. He erected a satellite dish on the roof of his unit contrary to Section 98 of the Condominium Act and refused to remove it.
2. Without consulting the other board members and despite the other members objections, the President continued to demand the records for the condominium corporation from management.
3. The President sent threatening e-mails to management and one of the board members.
4. The President without a resolution of the board, sent an e-mail terminating the management agreement.
5. Without the knowledge of the other board members, the President sent an e-mail to unit owners, on the condominium corporation's letterhead, advising that *"it appears that both the current and past Boards have disregarded many of the rules and regulations of both the Condominium Act and the By-laws of DCC 45."*



6. The President accepted service of his claim against the condominium corporation but did not notify the other board members until after the expiration of the 20 time limit for filing a defence.
7. The President parked in the visitor parking area and used his assigned parking space for a second vehicle.

The court noted that in order to be successful in a defamation action, three things must be proven:

(1) that the impugned words were defamatory, in that they would tend to lower the President's reputation in the eyes of a reasonable person;

(2) that the words in fact referred to the President; and

(3) that the words were published, meaning that they were communicated to at least one person other than the President.

The court found that that the requisition was circulated to the unit owners and that it was clear that the reasons for removal related to the President. The issue was whether the statements made in the requisition were defamatory. The court found that they were not and dismissed all the claims.

The court did note that even if any of the defendants defamed the President, then the court would have assessed the damages in the amount of \$2.00 as the President did not introduce any evidence to establish damage to his reputation.

This case is important in that it clearly shows that unit owners, board members and property managers, should ensure that where they are involved with a requisition to remove one or more board members, the reasons set out should be carefully reviewed, preferably by legal counsel, to avoid allegations of defamation and a potential claim.

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