

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 19, 2025

**CASE:** 2025-00376N

**Citation:** Oxford Condominium Corporation No. 24 v. Post, 2025 ONCAT 192

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Patricia McQuaid, Vice-Chair

### **The Applicant,**

Oxford Condominium Corporation No. 24

Represented by Madeleine Stirland, Paralegal

### **The Respondent,**

Charles Post

Self-Represented

**Hearing:** Written Online Hearing – October 9, 2025 to November 7, 2025

## **REASONS FOR DECISION**

### **A. INTRODUCTION**

- [1] The Applicant, Oxford Condominium Corporation No. 24 (“OCC 24”), alleges that Charles Post (the “Respondent”), a unit owner, is carrying on an activity in his unit in violation of s. 117(2) of the *Condominium Act, 1998* (the “Act”). Specifically, OCC 24 alleges that through his accumulation of garbage and other materials in the unit, the Respondent is permitting unreasonable odour to emanate from it which results in the creation or continuation of a nuisance. OCC 24 is seeking an order that the Respondent comply with s. 117(2) of the Act, that he be required to clean his unit and remove garbage to resolve the odour issue within 30 days of any order, failing which OCC 24 may retain a third party to clean the unit at the Respondent’s expense. OCC 24 is also seeking costs.
- [2] The Respondent joined the case when the application was filed on June 13, 2025, but did not participate in the Stage 2- Mediation or in this hearing. When the application was filed, OCC 24 also alleged that the Respondent was not complying with several of its rules related to storage of items on his unit’s deck. However,

OCC 24 stated at this hearing that “the noncompliant items being stored on the rear deck of the Unit had been removed” by the Respondent on June 24. As a result, any issues related to improper storage, including whether the impugned rules fell within the Tribunal’s jurisdiction, were not before me. OCC 24 stated that any evidence related to improper storage of garbage and other items would only be provided to demonstrate that how and where the Respondent is storing garbage is contributing to the migration of unreasonable odour.

- [3] I am satisfied, based on the evidence, that the Respondent was aware of the case; he was given the opportunity to participate. However, due to his nonparticipation, I must make my decision based on the evidence provided by OCC 24, weighed on the balance of probabilities. For the reasons set out below, I find that the Respondent has, whether by his activities and/or by his inaction, created unreasonable odour that is a nuisance.
- [4] For the reasons set out below, I am ordering that the Respondent comply with s.117(2) of the Act and remove garbage and clean the unit. OCC 24 may enter the unit to inspect and if it determines that unreasonable odour remains, it may hire a third party to clean the unit, the costs of which will be payable by the Respondent. Compensation and costs are awarded to OCC 24 in the amount of \$1950.

## **B. ISSUES & ANALYSIS**

- [5] The issues to be addressed in this matter are:
1. Has the Respondent failed to comply with s. 117(2) of the Act?
  2. If so, what remedy should be ordered?
  3. Should compensation and/or an award of costs be assessed?

### **Issue 1: Has the Respondent failed to comply with s. 117(2) of the Act?**

- [6] This is not the first time that complaints have been made about odours emanating from the Respondent’s unit. Samantha Roelans, OCC 24’s condominium manager, stated that in 2022, the Respondent had been “hoarding materials in the unit, which caused smells, mold and structural issues to the common elements”. Ms. Roelans indicated that the unit had to be completely emptied and rebuilt, but the unit owner was cooperative with the process at that time.
- [7] The complaints about odour that led to this application arose in November 2024. On November 20, 2024, the neighbour who lives adjacent to the Respondent in this townhouse style condominium sent an email to condominium management stating that since the Respondent moved back into his unit he appears to have

reverted back to his previous practice of allowing garbage and other items to accumulate in his unit with the result that the smell of garbage is now pervasive in the neighbour's unit. He stated that it was a consistent smell that was first noticed in his basement two months prior. In February 2025, the neighbour confirmed in an email to OCC 24 that the smell was still present despite them having spent over \$400 of their own money on air purifiers in an attempt to reduce the smell. In April, August and September 2025, the neighbour again confirmed the continuing presence of the odour though noted that on the days that the Respondent opens most of his windows, in an apparent attempt to air out his house, the smell diminishes somewhat. Based on his emails, the neighbour is clearly frustrated by the continuing and persistent odour and is of the view that the smell will continue if the Respondent continues to hoard his own garbage.

- [8] OCC 24 has made efforts to address the odour, with no success. In September and November 2024, OCC 24 sent letters to the Respondent about the storage of garbage on his deck. In December 2024, Ms. Roelans attended at the Respondent's unit with the assistant condominium manager to speak to the Respondent about the odour complaints. She stated that there was a noticeably strong smell of garbage as soon as they entered the unit and indications of hoarding, with items stacked up to the ceiling in various areas. Ms. Roelans phoned, left voicemail and sent emails to the Respondent about the odour and storage issues on approximately seven dates between November 2024 and June 2025. OCC 24 also retained legal counsel to send compliance letters to the Respondent; four letters were sent between January and April 2025. The issue persists. On October 22, 2025, Ms. Roelans was outside the Respondent's unit. She stated that there was a noticeable odour, described by her as a sour rotting garbage smell, as she walked by an open window, similar to what she experienced in December 2024 when she visited the unit.
- [9] Based on the evidence, both that of Ms. Roelans and of the neighbour through his various emails to OCC 24 describing his experience, I find that the Respondent is engaged in activities, specifically, accumulating garbage and other items in his unit, resulting in unreasonable odour which is a nuisance pursuant to s. 117(2) of the Act. His interference with the neighbour's enjoyment of their property is not trivial. It has persisted for over a year, despite their efforts to mitigate through their use of air purifiers. The smell may lessen, depending on the weather, but that abatement tends to be short lived. OCC 24 has exhibited patience, but the activity must now cease, and measures must be taken to eliminate the odour.

## **Issue 2: What remedy should be ordered?**

- [10] In both Ms. Roelans' communications with the Respondent and in the legal compliance letters, OCC 24 has displayed sensitivity to the Respondent, likely informed by their experience with the Respondent in 2022. In its letters dated March 13 and April 1, 2025, legal counsel stated that it was prepared to hire garbage removal and cleaning services to address the odour migration (with costs charged to the Respondent) as was done in 2022. Further, recognizing that addressing these issues may be difficult for the Respondent, counsel provided contact information for services in the community that might provide personal assistance and support to him. I commend OCC 24 for its approach to a challenging situation for its community. However, I understand that unlike in 2022 when the Respondent was responsive and cooperated with them in addressing a similar issue, OCC 24 felt it had to take a different approach this time.
- [11] I will order that the Respondent comply with s. 117(2) of the Act, and specifically, that he shall immediately begin removing the garbage from inside and outside his unit and have his unit cleaned to remove any odours that may migrate to the adjacent unit. Based on the evidence before me, I am cognizant of the fact that the Respondent may be unable to accomplish this on his own initiative. In addition to an order that the Respondent be required to clean his unit within 30 days, OCC 24 is seeking an order that it be permitted to inspect the unit upon expiry of that 30 days and if it determines that the unit is not in an acceptable state and the odour remains, that it can retain a third party to remove any debris or garbage and to clean the unit, the cost of which would be considered additional common expenses payable by the Respondent.
- [12] OCC 24 has referred me to a consent order issued by the Tribunal at the conclusion of a Stage 2 Mediation where a similar order was made<sup>1</sup>. These types of orders are relatively rare. However, in these particular circumstances, I find it is warranted. I have considered the evidence of the persistent and unreasonable odour and the evidence that this is a recurring issue. I have also considered both OCC 24's and the Respondent's obligations under the Act and under OCC 24's declaration.
- [13] An owner is required to maintain their unit. This obligation is set out in s. 90(1) of the Act and in s. 5.1 of OCC 24's declaration. A reasonable inference from this stated obligation is that a unit must be maintained to a level of cleanliness so that unreasonable odours which are found to be a nuisance under s. 117(2) of the Act do not emanate from the unit. Though an owner has domain over their unit, section 92(3) of the Act provides that where there is an obligation to maintain the unit and

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<sup>1</sup> York Condominium Corporation No. 271 v. Mead et al 2024 ONCAT 55 (CanLII)

the owner fails to do so within a reasonable time the corporation may do the work necessary to carry out the obligation. Section. 8.1 of OCC 24's declaration states that "Each owner shall indemnify ...the Corporation from and against any loss, costs, damages resulting from or caused by an act or omission of such owner."

- [14] Given the evidence before me and the statutory and declaration provisions referred to above, I will grant the order requested by OCC 24. OCC 24 shall give 72 hours' notice to the Respondent when it schedules an inspection of the unit. If it reasonably determines that the odour remains and clean up by the third-party service is required, it will ensure that the costs for that service are fair and reasonable. The Respondent shall be provided with documentation setting out the scope and cost of the work and will be liable for payment for the work done in accordance with that invoice. The Respondent shall be given reasonable notice - not less than 72 hours - of the third party's attendance.

### **Issue 3: Should compensation and/or an award of costs be assessed?**

- [15] OCC 24 is requesting compensation under s. 8.1 of its declaration and section 1.44(1) 3 of the Act in the amount of \$3210.38 for the legal costs incurred as it was seeking compliance prior to this application being made and an award of costs under s. 1,44(1)4 of the Act and Rule 48 of the Tribunal's Rules of Practice in the amount of \$4029.31 for legal costs incurred before the Tribunal, as well as reimbursement of the Tribunal filing fee of \$200. OCC 24 has requested its legal costs be awarded on a full indemnity basis.
- [16] Regarding compensation for the costs incurred prior to the Tribunal application, OCC 24's representative stated this amount relates to legal opinions/recommendations to OCC 24 about resolving the matter, meeting with the board as well as the four compliance letters. The issues under discussion, based on the legal letters in evidence before me, were broader than the odour issue alone. While, I have commended OCC 24 for the sensitive approach that it took on this issue, legal costs incurred, whether prior to the application being filed or during the Tribunal proceeding, must be an amount that is proportional, fair and reasonable in the particular case. Further, the Tribunal has stated in its jurisprudence that, in effect, the costs associated with a condominium corporation carrying out its duty to enforce compliance under the Act and its governing documents is reasonably anticipated to be part of the common expenses paid by all owners.
- [17] In these circumstances, I award compensation, related to those incurred prior to this application, pursuant to s. 1.44(1) 3 of the Act in the amount of \$750.

- [18] Regarding the costs incurred at the Tribunal, I have considered the cases submitted by OCC 24 in support of its request. It is well established that an award of costs is discretionary. While the principle that it can be unfair for other owners to be called upon to subsidize the costs of enforcing compliance against another owner has been clearly articulated by the courts, the courts have also noted that costs awards on a full indemnity basis are relatively unusual and awarded in only very narrow circumstances. This is not such a case.
- [19] It is true that the Respondent did not bring himself into compliance with the Act despite receiving several letters requesting that he do so. His noncompliance has had a significant impact on his neighbour. However, the Respondent's lack of response is somewhat consistent and the evidence before me suggests that there may be other factors affecting the Respondent's actions, or inaction. All of this led OCC 24 to file this application, though I do note that, OCC 24 also had recourse, under the Act, as noted in paragraph 13, to take steps to ameliorate the situation without recourse to the Tribunal. The fact that the Respondent did not participate in this proceeding has resulted in a more streamlined process; the issues were uncomplicated and straightforward. Weighing all of the various considerations set out above in exercising my discretion, I award costs related to this proceeding in the amount of \$1000.
- [20] Finally, as OCC 24 has been successful in this case and in accordance with Rule 48.1, I will order that the Respondent reimburse OCC 24 the \$200 Tribunal filing fee.

#### **D. ORDER**

[21] The Tribunal orders that:

1. The Respondent, Charles Post, shall comply with s. 117(2) of the Act and, specifically, he shall cease storing garbage and other items in and outside his unit which are causing unreasonable odour and shall clean his unit to ensure that odour is no longer migrating to other unit(s). The Respondent shall complete the removal of the garbage and cleaning of the unit within 30 days of this Order.
2. Pursuant to s. 1.44(1) 7 of the Act, upon expiry of the 30 days, OCC 24 shall be permitted to inspect the Respondent's unit, after giving the Respondent 72 hours' written notice of the date and time of their entry. Further, if OCC 24 reasonably determines that the unit is not in an acceptable state and that the odour remains and clean up by a third-party service is required, it will ensure that the costs for that service are fair and reasonable. The Respondent shall

be provided with documentation setting out the costs and scope of the work and is required to reimburse OCC 24 in accordance with that invoice upon completion of the work. The Respondent shall be given reasonable notice of not less than 72 hours of the third party's attendance at his unit.

3. Pursuant to ss 1.44(1) 3 of the Act, the Respondent shall, within 30 days of the date of this Order pay compensation in the amount of \$750 to OCC 24.
4. Pursuant to s. 1.44(1) 4, of the Act and Rule 48 of the Tribunal's Rules of Practice, the Respondent shall, within 30 days of the date of this Order, pay a total of \$1200 in costs to OCC 24.

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Patricia McQuaid  
Vice-Chair, Condominium Authority Tribunal

Released on: November 19, 2025