RISKBOSS

Preventing the Predictable

# Turning Down the Volume

## Understanding how to challenge nuisance noise to improve the quality of life for condominium residents

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# Noise

## What's the big deal?

There are very few issues that impact the quality of life for residents in condominiums more than nuisance noise. Noise disputes between neighbours and external noise issues that impact communities are among the most common yet the most troublesome and hardest to handle issues faced by condominium boards and property managers.

Nuisance noise issues can be costly affairs to resolve, and they frequently generate prolonged bad feelings between neighbours if not handled properly. All condominium residents have the right to the uninterupted 'quiet enjoyment' of their home and equal and objective enforcement of condominium Rules and local By-laws as it relates to noise.

Health Canada reports that nuisance noise can broadly be defined as, "Unwanted sound". When unwanted sound is left unaddressed and exposure to nuisance noise is prolonged, it is more than just a minor irritation to victims. It has shown to have the potential to adversely affect mental and physical well-being as well as quality of life. The impact of nuisance noise includes such issues as:

- Disturbance with rest and sleep
- Hearing damage
- Interference with communication
- Stress-related illnesses
- General annoyance and ill-feeling of helplessness
- Anger and anxiety related stress

## Types of Noise

Nuisance noise in condominiums typically comes in two different forms: **Internal** and **External** noise. As the solutions and remedies to address each type of noise complaint are different, it is important that condominium Boards and property managers fully understand how to address different noise complaints effectively.

When nuisance noise issues are acted upon properly support by lawful rules and processes, resolutions to noise complaints can re-enforce improved quality of life for all residents, and repeat occurrences can be minimized and even eliminated altogether. The radiating effect of good process in dealing with noise issues can be very positive for condominium communities.

What is a noise irritant to some, may not affect others at all. Every jurisdiction has a local Noise By-law. Such By-laws qualify and define what is, and what is not, objectionable noise. Effectively dealing with noise issues using this yardstick, as an objective measurement of what can be and cannot enforced isn't just the right thing to do, it's the law. When legitimate offences occur, condominium corporations are absolutely obligated to act.

Typical nuisance noise that impacts condominium residents include, but are not limited to:

- Construction and/or renovation noise
- Stereos and televisions
- In suite parties
- Dog(s) barking
- Security alarms
- Local businesses, restaurants, and night clubs
- Mechanical devices (HVAC, elevator malfunction)
- Community-based events
- Neighbours yelling

## Internal Noise Issues

Internal noise, regardless of the type or source, is often effectively dealt with first by security personnel to document the incident, followed up by property management. In addition to the (Ontario) Condominium Act and local By-laws, most condominium Declarations and Rules outline an effective process for dealing with noise and that typically includes the following steps:

- ✓ A series of progressive verbal & documented warnings
- ✓ Mediation if needed
- ✓ Legal intervention for more severe situations and chronic re-offenders

These steps, when followed correctly, have demonstrated time and time again to work well for all condominium Boards and property managers when faced with the need to mitigate nuisance noise complaints related to internal sources.

When nuisance noise issues are not addressed in an effective and consistent manner, there have been extreme cases where affected owners have been forced to take legal action in order to force condominium Boards to enforce noise control measures within a building. When this type of legal escalation takes place it typically wastes both time and money in seeking a resolution to a problem that could have, and likely should have, been addressed effectively and quickly when it first occurred.

Nuisance noise issues very rarely resolve themselves, but quick and professional intervention on the part of the condominium, security personnel and property management is the key to bringing an effective resolution to a potentially escalating problem. Having strong governance and a clear plan of action prior to situations occurring is the first step to a winning solution to nuisance noise.

## External Noise Issues

Nuisance noise that originates outside of the boundary of a condominium property often is a source of great frustration for residents. The efforts of condominium Boards, property management and security personnel to deal with external noise often fall short of permanently addressing the issue. Depending on the source of the noise, there are several effective methods of dealing with external noise; however, it is critical to choose the right steps and in the right order in dealing with these types of problems. Often outside help is needed to resolve these issues.

External noise, left unresolved, can lead to great frustration and in some cases may result in a negative image and stigmatization for both neighbourhood and the condominium itself.

Excluding noise from cars and other traffic issues, the three major sources of external noise that are most problematic are:

- Construction noise;
- Night clubs & restaurants; and
- Community events.

Over at least the last two decades noise from construction projects, nightclubs and an increasing number of community-based events have negatively impacted the quality of life of condominium dwellers in major urban centers across the GTA as condominium living has grown exponentially.

Local officials frequently receive such a high volume of noise complaints that many violations are left unchallenged, leaving external noise-related issues of condominium residents unresolved. The courts, police and local By-law officials are very often overwhelmed and are ineffective in dealing with such issues. This can subsequently lead to further abuses and victimization further aggravating the quality of life for condominium residents.

## Construction Projects

Local By-laws and building permits are very specific in regard to when construction sites can, and cannot, create noise. Most construction companies abide by permit restrictions; however, due to the incredible and sustained demand for construction in the GTA, there have been cases where noise By-laws have been chronically and repeatedly violated. The effect of prolonged construction noise can be devastating to the quality of life for condominium residents. Some condominium corporations often avoid dealing with such complaints as the source is not within their building and perceived jurisdiction. This can lead to further frustration. There are a variety of methods to resolve these issues despite regardless of the source of the noise.

## The Night Club & Restaurant Patio Scene

Few issues have impacted urban condominium communities more than the growing nightclub and restaurant patio scene. Countless media articles have been written about the negative impact that such venues have had on communities.

While some progress has been made in recent years in urban centers nightclubs and restaurants, this still remains the number one source of external nuisance noise for many condominiums that are in close proximity. As it appears when one nightclub closes their doors, another club takes their place, creating new noise issues for condominium communities to deal with.

As with construction noise many condominium corporations often avoid such complaints, as the source is not within their building. This can lead to further frustration. There are a variety of methods to resolve these issues regardless of the source of the noise.

## Community Events

It seems like every week there are multiple community events everywhere in the GTA. Community events such as the Toronto Taste of the Danforth, Woofstock, the Santa Claus Parades, St. Patrick's Day Parade, Buskerfest, TIFF, Pride, Caribbean Festival, charity runs and bicycle races (and the list goes on) are events that are heavily regulated by the urban political officials and allowed only by a permit. Similar events occur everywhere in the GTA where noise and causing traffic congestion is a problem for many local residents.

Albeit aggravating for many local residents, most of these community events are well organized, heavily policed and by and large compliant within the scope of their permits.

Such permits are never issued without the authorization of a local urban political representative and often with input from the community. Strict rules are enforced by city officials overseeing these events and violators can be heavily prosecuted. Police are often engaged to ensure safety and permits are strictly adhered to.

Riskboss cannot emphasize enough that there is no time like the present to have and maintain a very close working relationship with your local political representatives, local police and other community-based groups to ensure such events are limited and do not negatively affect the quality of life of residents in your condominium community.

# Noise and the Law

All local jurisdictions have a Noise By-law. The Noise By-Law in Toronto, for example exists in Chapter 591 of the Municipal Code. These By-laws are very powerful and have wide ranging limitations on noise with sometimes-severe consequences for violations.

The law with respect to noise throughout local GTA By-laws is broken down into several categories that include both general and specific prohibitions on noise. Each By-law outlines differences in the way noise issues are treated locally in residential properties versus commercial properties.

Exceptions to noise By-laws can only be made in very specific circumstances and requires permits (e.g. Construction, community events, etc.). GTA By-laws clearly outline what noise violations are, and when noise is allowed. It is important for condominium Boards to understand local By-laws and how it relates to your building Rules so that these are both aligned.

## Frequently Misunderstood & Misused

Local Noise By-laws are one of the most misunderstood laws and often misused. By-laws are frequently not used in the proper context and contrary to what the law prescribes, typically by offenders with an agenda to violate the law or by those who inadvertently misinterpret the law. Noise By-laws must be understood and applied accurately to avoid unintended consequences.

The overriding principle for the purposes of condominium residents can be found in most local Noise By-laws in that the most prohibitive sections of the By-law apply. This is usually with respect to how noise affects residential neighbourhoods (including condominiums). These clauses set the tone for the entire By-law and provide very set limits for people making noise and those are in an ownership or management position who, "Permit" noise. The stronger limitations to noise are usually any time of the day or night and by any means.

The class of offences related to Noise By-laws is known as a, "Strict" or “Absolute Liability Offence”. This means that whether the person means to commit the offence or not, and whether the offender knew it was an offence or not, is completely irrelevant. Once the offence is committed, it is enforceable. A person’s intent is also irrelevant and does not have to be proven in such cases. Further, a person who may own a nightclub, for example, may not even be at the club, but may still be held accountable.

Due diligence is not an excuse for strict/absolute liability offences either. Meaning that whether the owner of a nightclub tried to take precautions to ensure the noise level was legal but failed is irrelevant. The fact that it occurred constitutes the offence. Such mitigation may only be given weight during sentencing by the courts. Noise By-laws further describe **specific** prohibitions over and above the **general** prohibition that prohibit noise for the general public. The general prohibition is most often the most restrictive and therefore takes precedence over specific prohibitions but it will be spelled out each By-law which clauses are more important.

The overriding emphasis in all Noise By-law's is that occupants who occupy residential homes in urban environments have rights to quiet enjoyment of their residences and therefore, they are protected against unwanted noise from any source unless otherwise provided by law (e.g. Permits).

So, for example, you may have a restaurant or a fitness club who may want to attract people to their businesses by emanating loud amplified music from speakers that not only project into the street, but also negatively affects condominium residents. This is prohibited in most jurisdictions. Such sections in local Noise By-laws are very important when dealing with such incidents but may be equally applied to condominium residents with loud stereos and televisions as well. The test is an objective one in that if you can hear the noise past the property line, the offence is committed. If a neighbour can hear loud noise through a wall, into the hallway or even from an adjoining balcony, the offence is committed.

Toronto changed their Noise By-law (Revised effective October 2019) so that it aligns with other jurisdictions throughout Ontario. For decades there was a core qualitative and subjective element in the old By-law, but now this has been replaced with an overreaching quantitative and objective component. The old By-law relied heavily on a complainant’s version of the events that was very 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 or independent reports by security that have verified the noise, the level of the sound and the source of the noise. Toronto is also moving away from the traditional police and court response model to noise issues relying more on an improved City By-Law Enforcement Program and mediation.

Unlike the old By-law, unwanted noise must be, “**Unreasonable** and **Persistent**” before action can be taken by City officials. Note that the new By-law clearly defines what both unreasonable and persistent means and provides examples. It is important for Boards to understand that they cannot decide for themselves what, “Reasonable noise” is and what it is not.

Condominium Declarations are written by lawyers and as such, it is already in compliance with the local Noise By-laws. It is very important to remember that a Board cannot create new building Rules that are in direct contravention of local By-laws. For example, a Board cannot allow loud noise between 10am and 9pm as this would contravene the local Noise By-law.

Inappropriate construction noise outside of allowable hours can be effectively stopped when local By-laws are utilized. Noise By-laws go further to prohibit other nuisances to protect the public. Included, but not limited to, are the following nuisances:

- Racing of motor vehicle engines
- Squealing tires
- Loud mufflers on cars and motorcycles
- The sounding of horns or other such devices
- Dog barking, whining or other similar noise
- Loud Air conditioners & HVAC units
- Commercial vehicle noise such as waste removal at inappropriate times

Permits may be granted by the local authorities to allow noise that may otherwise be in violation of the By-law but only under certain conditions. Unless such noise is allowed by permit, the offence has been committed, and it is enforceable.

## Acting on Noise Complaints

The first step in acting on noise complaints, regardless of the source, is to have a legal and formal process to follow in advance of any noise issue arising. This are found in the following:

- ✓ Condominium Declaration
- ✓ Building Rules enacted by the board
- ✓ Effective procedures for dealing with noise issues by:
  - Security
  - Property managers
  - Ombudspersons/Mediators
  - The Board
  - Lawyers
  - Local By-law Enforcement

Once in place, noise complaints can be acted upon in an efficient and uniform manner and the results properly measured to ensure the process is objective, fair and effective for all.

Determining and verifying the source of the noise can often be very difficult. Despite what may appear to be an obvious source of noise, some building designs and size make it appear that noise is coming from one area, yet actually the noise is coming from another area. This happens very frequently.

Accurately verifying the cause and source of the noise is a key element of this process and a core component before proceeding with offences contrary to a Noise By-law or violation of a building Rule. Security must actively verify noise sources.

The quick response and resolution to a noise complaint can avoid further complaints and create a positive living environment for everyone. Explaining the law to offenders and reporting it is the quickest and most effective method of dealing with this problem.

Accurately documenting noise complaints at the time of the event creates a contemporaneous benchmarking history of incidents that may be referred to later. Allowing noise to continue over and over again unabated, suggests to an offender that this type of behavior is acceptable and to a victim, that no one cares.

# A Three Step Process

## 1. Security as First Responders

Most security companies are single licensed by the province of Ontario. This means that such companies have a limited mandate to only, "Observe and report". Dual licensed companies are better enabled to address all noise issues with the inclusion of a private investigation function as part of the overall noise mitigation strategy. It should be noted that first responders MUST in all cases maintain absolute confidentiality.

## 2. Follow-up by Property Management as Incident Managers

Property managers are then engaged to follow-up and connect with both the offender and the complainant. If not properly managed, such incidents can take up a great deal of the property manager's time. Mediation is another means of resolution that some condominiums often use that is very effective. In some condominiums Boards have created the role of "Ombudsperson."

These roles are important to ensure objectivity in the process prior to final decisions being made by the Board. This is also something that local authorities are moving towards, as police, courts and by-law officials cannot effectively deal with local noise concerns due to the extremely high volume of cases.

## 3. Board of Directors as Decision Makers

Individual Board members should never become directly involved with residents by either investigating or mediating issues. The Board governs and their employees (e.g. property managers and security) in turn interact with resident issues. This buffer is essential to maintain Board objectivity as decision makers and policy makers to avoid the perception of bias. To keep this in proper perspective, Boards make decisions and direct as a Board, managers manage and employees do the work.

## When Should the Board be Engage and How?

There are varying opinions on the matter of when a Board should engage as it relates to noise issues. For example, when should a Board engage in the following examples:

- Internal noise complaints
- External off-site sourced noise issues affecting residents
- Issues that impact the building around the community
- Participating in community associations representing the condominium corporation and residents

There is no question that Board members have a fiduciary duty to the corporation and owners. When does that duty begin and end? When does a Board extend past that duty? This is often left to legal counsel that represent Boards to assist in deciding when and how to engage. Having a clear vision on when and how to engage is important prior to any incidents occurring.

The following are key elements in effective complaint resolution are recommended:

- ✓ Administer complaints quickly and fairly
- ✓ Use the most appropriate tools and resources that support you in your role(s)
- ✓ Communicate Rules often as well as mitigation successes immediately to reinforce the standards
- ✓ Support residents for incidents both internal and external
- ✓ Maintain confidentiality always

## Setting Expectations for All Residents

Condominium Declarations and building Rules set the expectations of behaviour for all residents and guests of buildings. The Condominium Act sets out expectations for the Board. Local By-laws set out expectations for a community. Often left as is, a void of expectations arises for residents if not properly communicated and uniformly administrated.

Consistent and effective communication of expectations by the Board, property management and security team to the community is essential to developing a standard of behaviour for all residents that then becomes a lot easier to manage.

## An Alternative to Unpleasant Noisy Neighbours Around Your Community

Working with dual licensed security service providers, Riskboss is able to assist outside of condominium property lines. Provincial & By-Law Investigations services are ideal for:

- ✓ Excessive noise violations (Internal & External)
- ✓ Crowd control and traffic related issues
- ✓ Frequent disorderly conduct
- ✓ Unlicensed liquor and drug use
- ✓ Public or private property damage
- ✓ Attending court on your behalf

Experienced investigators can provide extensive provincial, federal and municipal law enforcement experience. Such professionals can manage cases from initial complaint and interview(s) through to intervention with local enforcement officials. Independent investigators can collect evidence, gather impact statements, work with legal professionals, prepare court admissible documentation and liaise closely with law enforcement to ensure that rights are protected and property values and property reputations are preserved.

Independent investigators can initiate the process on behalf of residents directly with a local Justice of the Peace and liaise with provincial prosecutors through to a successful conclusion, ensuring that meaningful consequences discourage reoccurrences.

Additionally, clients can choose to remain anonymous as investigators becomes witness to and act on behalf of residents, handling incident management and resolution from start to finish thereby eliminating the time and potential uneasiness of having to attend court.

For more information on Riskboss please refer to our website at:
**www.riskboss.com**

# About The Author

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Founded in 2009, Riskboss™ (www.riskboss.com) does one thing and one thing only. Riskboss exclusively provides outstanding investigative, risk analysis and management, and organizational / executive protection advice to notable organizations throughout the Greater Toronto Region (GTA). Since inception, Riskboss has had one purpose in mind: *To create a company that specializes only in independently and objectively identifying and mitigating risk and providing unique and outstanding client service,* nothing more.

As a founder, president and CEO of Riskboss Quintin Johnstone brings a wealth of experience and expertise also brings with him a vast list of professional contacts and resources all of which provides distinct and unique benefits to his clients. Prior to creating Riskboss, Quintin had a thirty year public career with the Toronto Police Service (TPS) working and supervising in the areas of criminal investigation, major criminal case management, internal investigations, drug enforcement, major case management, frauds, Asian crime, prostitution, youth crime, prostitution and undercover work. He was handpicked amongst his peers to lead 31 Division, Detective Operations where he was in charge of the largest investigative team in the Toronto Police Service overseeing the work of seventy-five detectives.

Being selected to become a member of the exclusive Chief of Police Headquarters Executive Staff in the Corporate Planning Unit, he was involved in creating organizational programs and governance, overseeing recommendations from Coroner's Inquest Juries. Quintin has been awarded and is widely recognized as a subject matter authority in the creation, review, audit, legal compliance and maintenance of organizational governance and has created and implemented some of the most complex business systems and processes that have been realized by the Toronto Police Service.

In 2004, Quintin was the architect and project leader in one of the largest business re-engineering projects regarding criminal disclosure that the TPS has ever undertaken. This project has dramatically changed the businesses practices between the TPS and the Crown in the Public Prosecution Service of Canada (PPSC) (formerly the Federal Department of Justice - DOJ) and the Ministry of the Attorney General (MAG) affecting thousands of end users of this new process. He was seconded to the Ontario Ministry of the Attorney General assisting in organizational changes Ontario-wide.

In 2006, Quintin was engaged to reengineer the corporate governance for one of the largest universities in North America. This project spanned three separate campuses over two Municipal jurisdictions that involved a complete retooling of the policies of the University of Toronto Campus Police.

In 2009, Quintin was commissioned by the prominent Toronto condominium law firm: Gardiner, Miller, Arnold, LLP to lead and re-engineer the business practices of the largest Hong Kong holdings of condominiums and commercial properties in Toronto. While reengineering the organization to a more productive culture, he also conducted risk assessments on the organization, residential condominiums and commercial properties. This is what led to the creation of Riskboss.

Quintin has been elected to four boards and has sat on countless committees. This provides him with a unique perspective that assists to exceed Board member client expectations. He is heavily involved in municipal and provincial politics and routinely called upon as an advisor and to Chair committees. The relationships that Quintin has developed through the years allows for a unique appreciation of how to assist with problem solving and process creation designed to enhance the long-term benefits of organizations and communities.

Members of the Riskboss team are on the speed dial of and are routinely called upon to provide advice and consult with law firms, Boards, leaders of property management companies, general managers of large corporations and have agreed to assist by sitting on and leading (sub)committees regarding risk related issues. We are often requested to chair annual general meetings, to intercede as mediators in problematic organizational issues. We are regular guest speakers with management firms during their training sessions.

Quintin is also the president and CEO of Samsonshield Inc. (www.samsonshield.com) that is a premier security service provider to residential condominiums across the GTA. Samsonshield is a proud member of the Association of Condominium Managers of Ontario (ACMO), the Canadian Condominium Institute (CCI), PAN-ETHIC, and maintains an A+ rating with the Better Business Bureau (BBB). Samsonshield is proud to be included on the *Preferred Vendors' List* for many prominent property management firms in southern Ontario.

Quintin has provided advice for over two decades to law firms and property management companies on the application of criminal, provincial and municipal law and process as it relates to condominium communities. He has participated as a guest author creating articles in such publications as Canadian Security Magazine, CCI's - Condo Voice Magazine, Condo Business Magazine and Condo News Magazine. Quintin is the founder of Riskboss Magazine that is the premier source of information on organizational and community risk (www.riskbossmagazine.com).

Suffice it to say that Quintin and his team of professionals under his direction know how to identify and mitigate risk. All of this experience has assisted Riskboss to deliver intuitive and superior client service that mitigates risk to Boards, property managers and organizations.

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