

Three Ways to Protect Yourself from the Nightmare Neighbour in Your Complex

**“A bad neighbour is a misfortune, as much as a good one is a great blessing.”
(Hesiod, 700 BCE)**

It seems that every community has at least one nightmare neighbour who delights in objecting to everything, fighting with residents and management at every turn, and becoming abusive and aggressive when they don't get their way.

What can you do to protect yourself and your family if you live in a residential complex and come under attack from such a neighbour?

Of course, first prize will always be to prevent a long and bitter feud from developing in the first place. But if you've tried the “let's chat about this over a cup of coffee” approach without success, what then?

The case of the abusive neighbour and the protection order

Two residents of a complex ended up in the High Court after a magistrates' court had issued an interim protection order restraining one resident (a man) from having any contact with another resident (a woman). This after he'd subjected her to verbal and physical abuse, threats, and harassment.

The Court's judgment doesn't say where these warring neighbours live. And it provides scant details of their conflict, barring that the victim ended up being physically injured. While these details would have been fascinating, the decision's importance lies in the Court's confirmation that our laws do provide complex dwellers with two, and in some cases three, options for protection.

Let's investigate...

The Community Schemes Ombud Service

The CSOS (Community Schemes Ombud Service) has wide powers to arbitrate in disputes concerning complexes and other community schemes. Included in those powers, in respect of "behavioural issues", is the power to order "that a particular behaviour or default constitutes a nuisance" and requiring "the relevant person to act, or refrain from acting, in a specified way."

That's great in theory but unfortunately the CSOS process is not always as quickly accessible as it should be. So, it's good news that the High Court in this particular case allowed the victim to pursue a more immediate and direct route to justice using Option 2.

This is an important outcome, because the golden rule has always been that you are obliged to approach the Ombud Service first in any case where it has jurisdiction. If you don't, and you decide to go straight to court, you risk being thrown out of court for jumping the gun. But there are exceptions to that rule...

The Protection from Harassment Act

The PHA (Protection from Harassment Act) gives you and your family a straightforward and affordable solution, allowing you to apply for a protection order from your local magistrates' court to force the harasser to stop their unlawful behaviour immediately. The Act is strong in its enforcement, with violators facing arrest and fines or imprisonment of up to five years.

"Harassment" is defined widely in the PHA as covering any conduct that causes or threatens harm (mental, psychological, physical, or economic) and extending to stalking, cyber-stalking, sexual harassment and physical or electronic communication.

As this Court put it, "The mischief which the legislature intends to eliminate ... is the prevalent violent behaviour in our society and in particular gender-based violence". The Court certainly considered it relevant that the complainant in this matter is a woman, and her harasser a man.

The Domestic Violence Act

If harasser and victim are in a “domestic relationship”, there is a third option that was not mentioned in the judgment as it did not apply in this instance: the protections of the DVA (Domestic Violence Act). These protections are again quick, accessible, and effective, and the definitions of both “domestic relationship” and “domestic violence” are wide.

When are neighbours in a complex limited to Option 1? The High Court has spoken

Now for the crunch. This dispute ended up in the High Court because the magistrate reasoned that the application was prematurely before his court. He said the application should have gone first to the CSOS because the conduct complained of was a “nuisance” which gave the CSOS power to adjudicate the matter.

Not so, held the High Court on appeal. Nothing prevented the magistrate from hearing an application based on the PHA, and the victim had been free to choose either option. In reaching this decision the Court commented that “... the disputes to be dealt with under this [CSOS] Act, are those which concern the well-being of a community scheme as opposed to individuals’ dispute (sic)” – an indication perhaps that our courts will allow a direct approach to a court where “harassment” (as defined) impacts on you personally as an individual rather than solely as a complex resident.

The upshot

It’s back to the magistrates’ court for the duelling neighbours. The magistrate, after hearing both parties and any further evidence, will either make the protection order final, or discharge it.

So, which remedy should you choose?

If your neighbour’s conduct amounts to personal “harassment” or “domestic violence” as well as “nuisance”, you might well have a choice of remedies and should choose whichever is more likely to give you and your family the quickest and most effective protection. If, however, your neighbour’s conduct does not amount to either personal harassment or domestic violence, a first approach to the CSOS will probably be advised as the safer course.

Got a troublesome neighbour? We can help.