

## DEFINING TERMS AND THE IMPORTANT DISTINCTION BETWEEN RULES AND POLICIES

by Rachel Fielding and Emily Duncan

In *Boodram v Peel Standard Condominium Corporation No. 8431*<sup>1</sup>, the Condominium Authority Tribunal (the "CAT") reviewed the Corporation's ability to make a determination as to whether someone is a visitor or resident, in order to properly apply the Corporation's declaration provision which prohibits a resident from parking in Visitor Parking.

The issue was not whether the Corporation could enforce the provision of the Declaration, but rather, whether the Corporation had authority to make a determination as to whether someone was a visitor or resident in order to enforce the provision. The Applicant contested the Corporation's policies relating to the issuing and enforcement of visitor parking permits and argued that the policies were improperly enacted rules, which were therefore not enforceable.

The CAT agreed. Absent underlying authority in their governing documents or in other applicable law, a condominium cannot simply *ad hoc* define terms or criteria for enforcement. The CAT stated:

*"there are circumstances where provisions in a declaration might not be defined; the corporation may then add definitions by way of amendment to the declaration in question, by creating a rule that further defined the terms of the declaration, or ...by relying on other definitions or criteria legally recognised (such as prior judicial decisions) as applicable "in the condominium context."*

The reason for this, is to safeguard against inconsistent decisions or applications of the declaration provision if and when board directors and/or property managers are replaced.

Even the Business Judgment Rule could not save the Corporation in this instance. The Business Judgment Rule gives deference to the board of directors' decisions. The CAT determined, however, that the Corporation's determination of whether the individual parking in Visitor Parking was a resident was not fair and reasonable in the circumstances. The Corporation's governing documents must define terms and set out specific criteria to make such a determination valid.

The CAT went on to make it clear that policies are not enforceable on their own and a corporation is unable to rely on the provisions in section 58 of the *Condominium Act*, 1998 (the "Act") as support for this. Nothing within the Act supports the assertion that policies can be relied upon and enforced on their own as a properly enacted rule would.



[David Thiel](#)  
Partner

t: 416.941.8815  
[dthiel@foglers.com](mailto:dthiel@foglers.com)



[Carol Dirks](#)  
Partner

t: 416.941.8820  
[cdirks@foglers.com](mailto:cdirks@foglers.com)



[Rachel Fielding](#)  
Associate

t: 416.864.7402  
[rfielding@foglers.com](mailto:rfielding@foglers.com)



[Emily Duncan](#)  
Associate

t: 416.864.7621  
[eduncan@foglers.com](mailto:eduncan@foglers.com)

<sup>1</sup> *Boodram v. Peel Standard Condominium Corporation No. 843*, [2021 ONCAT 31](#)

Despite this, the CAT reiterated that policies are useful and can be put in place to "*provide a consistent and reliable framework to guide its conduct and conclusions in a decision-making process.*" The main reason that policies cannot be enforced in the same manner as the corporation's governing documents is that there are no formal requirements which corporations have to follow when policies are enacted. Unlike rules, which have to follow the provisions in section 58 of the Act, there are no formal procedures for instituting a policy which could permit owner input.

It is possible that the Corporation could have avoided this by implementing a formal rule regarding visitor parking and how the declaration provision would be enforced. They then could have also clearly defined criteria and definitions for the term "visitor" within the rule.

While this could be an issue raised in a number of other contexts, it however, must be kept in mind that this decision applies to the specific facts of this case. A different factual scenario, along with differently worded governing documents, may alter the applicability and enforceability of a policy. Corporations should consider consulting their legal counsel to ensure that they are validly enforcing their governing documents.

-----

<sup>1</sup> *Boodram v. Peel Standard Condominium Corporation No. 843*, [2021 ONCAT 31](#)