

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 2, 2026

**CASE:** 2025-00339N

**Citation:** Kang, Cooray v. Peel Standard Condominium Corporation No. 1062, 2026 ONCAT 35

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

**Member:** Nicole Aylwin, Vice-Chair

**The Applicant,**

Mani Kang,

Represented by Shawn Pulver, Counsel

Delini Cooray

Represented by Shawn Pulver, Counsel

**The Respondent,**

Peel Standard Condominium Corporation No. 1062

Represented by Angad Singh, Counsel

**Hearing:** Written Online Hearing – August 29, 2025 to February 18, 2026

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicants, Mani Kang and Delini Cooray, reside in a unit of the Respondent, Peel Standard Condominium Corporation 1062 (“PSCC 1062” or the “corporation”). The Applicants’ unit is located above the corporation’s garage entrance. In January 2025, the corporation replaced the garage doors. The Applicants claim that since the replacement they have been experiencing unreasonable noise and vibration in their unit each time the garage door opens.
- [2] The Respondent does not dispute noise from the garage door is audible in the unit of the Applicants. However, it takes two positions on this matter. First, it asserts that this case is more properly characterized as a dispute over repair and maintenance under s. 80-92 of the *Condominium Act, 1998* (“the Act”) over which the Tribunal does not have jurisdiction. Second, it submits that if the dispute is

found to be within the Tribunal's jurisdiction the noise experienced by the Applicants is not unreasonable and the corporation has taken reasonable steps to attempt to address the noise being experienced by them.

- [3] For the reasons set out below, after considering the submissions from the parties, I find that the Tribunal does not have jurisdiction to hear this dispute. The application is dismissed. While I have considered all the submissions and evidence before me, I refer only to what is necessary to make my decision.

## **B. ISSUES & ANALYSIS**

- [4] There are two ways that a noise complaint can fall within the jurisdiction of the Tribunal:

1. An activity is causing unreasonable noise that is a nuisance, annoyance or disruption and is prohibited under s. 117(2) of the Act; and/or.
2. The application is about a provision in the condominium's governing documents that prohibits, restricts or otherwise governs any other nuisance, annoyance or disruption, which would fall under s. 1(1) (d) (iii.2) of Ontario Regulation 179/17 ("O. Reg. 179/17").

- [5] The Applicants assert that they do not bring the application before the Tribunal as a dispute under s. 117(2) of the Act, but rather they assert it falls within the Tribunal's jurisdiction under s.1 (1) (d) (iii.2) of O. Reg. 179/17". The Applicant relies on this provision of O. Reg 179/17 and s. 3.1(a) of the corporation's declaration to argue that this dispute is one that the Tribunal has the legal authority to hear and decide. Section 3.1(a) of the declaration reads as follows:

Each owner may make reasonable use of and has the right to enjoy the whole or any part of the common elements, subject to any conditions or restrictions set out in the Act, the Declaration, the Corporation's by-laws (the "by-laws") and the rules. However, no condition shall be permitted to exist and no activity shall be carried on in any Unit or in the common elements that is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other Unit owners of the common elements and the other Units.

- [6] From the outset of the proceeding that Applicants have asserted that this case is nearly identical to *Kimel v. Toronto Standard Condominium Corporation No. 2026*, 2023 ONCAT 186 ("Kimel") in so far as s. 3.1(a) prohibits any condition to exist that unreasonably interferes with owners use and enjoyment of their unit.

- [7] In *Kimel*, the Tribunal found that a provision in the Respondent corporation's governing documents was sufficiently broad enough to,
- impose upon the Respondent [the corporation], in so far as it acts on behalf of all unit owners in accordance with the Act, a duty not to allow a condition that unreasonably interferes with the use and enjoyment of the common elements or their units by any of the owners.
- [8] The Tribunal went on to find that the noise and vibration caused by the operation of the garage doors constituted an unreasonable interference with the Applicant's enjoyment of her unit contrary to the Respondent's declaration.
- [9] In reply, the Respondent argued that the facts in this case were more akin to *Siewwright v. Toronto Standard Condominium Corporation No. 1793 et al.*, 2023 ONCAT 68 ("Siewwright") and *Tarski v. York Region Standard Condominium Corporation No. 1179*, 2023 ONCAT 80 ("Tarski") than *Kimel*. It argued that similar to the Tribunal's decision in these two decisions, Tribunal has no jurisdiction to hear this dispute.
- [10] I note that during the hearing the Applicants counsel expressed frustration with the fact that the Respondent's counsel waited to raise these cases and the question of jurisdiction until late in the hearing (i.e., in its reply to the submissions of the Applicant). However, given that from the very outset of the proceeding, the Applicants made clear that they intended rely on *Kimel* as a basis for bringing this dispute to the Tribunal, it was reasonable to expect that the Respondent would, at some point, address the jurisdictional argument made by the Applicant and the arguments made in *Kimel*. Regardless, the Tribunal can hear a jurisdictional issue at any time and under Rule 19 of the Tribunal's Rules of Practice, dismiss a case at any time, if it finds it does not have the legal authority to hear the dispute.
- [11] Regarding the cases cited by the Respondent, in *Tarski*, which was about noises begin made by the condominium's pipes, the Tribunal found that the evidence established that the noise from the pipes being complained about was not due to an activity that would be captured by s. 117(2) of the Act. Rather, the Tribunal determined the noise was the result of a maintenance and repair issue. So, while the Tribunal found there was noise, the issue was not within the Tribunal's jurisdiction.
- [12] *Tarski* however, dealt only with the question of whether the noise issue was captured by s. 117(2) of the Act. It did not deal with any other provisions in the governing documents that prohibit or otherwise govern nuisance, annoyance or disruption. *Siewwright* does. In *Siewwright*, the issue before the Tribunal was

about noise produced when owners and/or other residents drove over a grate located in garage floor. Ms. Sievewright alleged the noise from the grate was unreasonable and a nuisance. In considering jurisdiction, the Tribunal considered both s. 117(2) of the Act, and a provision in the corporation's declaration that the Applicant submitted was broad enough that it captured the noise issue.

- [13] Like in Tarski, in Sievewright the Tribunal found there was no activity being carried out that would be captured by s. 117(2) of the Act. However, after considering the provision of the declaration cited by the Ms. Sievewright, the Tribunal further concluded that that the provision being relied upon did not apply to the corporation but rather was meant to govern the activities of owners. The Tribunal found it did not bring the dispute within the jurisdiction of the Tribunal since no owner was creating the alleged noise nuisance – they were simply using the common elements properly for their intended purpose. The Tribunal went on to conclude that even if unreasonable noise was proven, a garage is a common element with a necessarily fixed location, and the corporation is responsible for its repair and maintenance under s. 89 and s. 90 of the Act. Thus, it was not an issue that fell under either s. 117(2) of the Act, or the declaration provision cited by Ms. Sievewright.
- [14] The evidence in this case is that after garage door was replaced by the corporation, the normal use of the garage door (i.e., its opening/closing) is causing noise and vibration in the unit of the Applicants.
- [15] Similar to Tarski and Sievewright, I find this does not fall within the Tribunal's jurisdiction to hear a dispute under s. 117(2) of the Act. There is no activity by other unit owners that would lead to this dispute being captured by this section. An owner who is using garage door properly for its intended purpose is not engaged in an activity that causes noise; it is the garage door, not the drivers' activity which is the source of the alleged noise and vibration nuisance. Further, the Applicants in this case did not suggest that owners or residents are in any way responsible for the alleged noise and vibration nuisance, but rather they assert the corporation caused the noise and vibration when it replaced the garage door (i.e. made a change to the common elements of the corporation). This dispute is not one that falls under s. 117(2) of the Act.
- [16] This leaves me to determine whether s. 3.1 (a) of the corporation's declaration is sufficiently broad enough to apply to prohibit activities or conditions created by the corporation that cause noise and vibration nuisance. I find it does not. While the Applicants may assert that the provision in its governing documents is similar to Kimel (though it is not evident from the quoted portion in Kimel how similar) the

provision cited to me by the Applicants in this case is nearly identical to the provision that Ms. Sievewright attempted to rely on in Sievewright.

- [17] Section 3.1 (a) of the corporation's declaration begins in the exact same way as the provision cited in Sievewright, it states that, "Each owner may make reasonable use of and has the right to enjoy the whole or any part of the common elements..." It then goes on to state, again, in nearly identical language to the provision cited in Sievewright,

However, no condition shall be permitted to exist and no activity shall be carried on in any Unit or in the common elements that is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other Unit owners of the common elements and the other Units.

- [18] Given the language of s. 3.1 (a) of the corporation's declaration, I find the reasoning in Sievewright to be more persuasive than Kimel in this case. Like in Sievewright, I find the reference in s. 3.1(a) to "other Unit owners" means this section of the declaration applies to owners and not to the corporation. The Respondent would have an obligation to enforce s. 3.1(a) of the declaration if other owners, residents or visitors were creating the alleged nuisances either through an activity or condition. However, as discussed above they are not. Therefore, s. 3.1(a) of the declaration does not bring the dispute within the Tribunal's jurisdiction as it governs nuisance conditions and activities created by owners not the corporation.

- [19] Regarding the question of whether this is a repair and maintenance issue, the finding above means that I do not need to determine whether this issue is one that falls under s. 89-90 of the Act.

- [20] In conclusion, I find the Applicant has not demonstrated that the issues before me are governed by any provision in its governing documents or the Act over which the Tribunal has jurisdiction and I dismiss this application.

- [21] Finally, I wish to note that although I am dismissing the case because the issue does not fall within the Tribunal's jurisdiction, I am sympathetic to the Applicants' circumstances. The crux of the matter is their unit is located over the garage and the evidence is that the operation of the current garage door is creating noise and vibration. The evidence is also that the corporation is taking steps to attempt to address this issue. I urge the corporation to continue its efforts to address the concerns of the Applicants, and I urge the parties to work together to determine the most viable solution.

**C. ORDER**

[22] The Tribunal Orders that:

1. This case is dismissed.

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Nicole Aylwin  
Vice-Chair, Condominium Authority Tribunal

Released on: March 2, 2026