



**Sonja Hodis, Barrister, Solicitor & Notary**  
62 Camelot Square, Barrie, Ontario, (705) 737-4403  
sonja@hodislaw.com

Other areas of practice include estate administration and disputes, property law disputes and employment law issues.

## **Human Rights and Condos – Learning from the mistake of others? Sonja Hodis, Hons. B.A. LLB**

The Human Rights Code and the adjudication system to deal with human rights issues in Ontario saw a major change in June 30, 2008. Since that time, several condominium cases have found their way through the new Human Rights Tribunal and the court system. A review of some of these cases provides insight into the expectations of condominiums when dealing with accommodation requests, the unresolved issue of who pays for accommodation and the upholding by the Court of Appeal of a single family occupancy provision in a declaration.

There is no doubt that the Human Rights Code of Ontario applies to condominiums and as such condominiums have an obligation to accommodate those that are protected by one of the grounds listed in the Human Rights Code. When an individual can prove discrimination under the Code, the condominium then has a duty to accommodate that individual to the point of undue hardship. In a condominium setting the Tribunal can, when considering undue hardship, take into account the rights and interests of other owners. The Tribunal in a recent decision made it clear that it does not have jurisdiction to “evaluate relationships between condominium corporations and unit owners or to resolve all situations of rudeness, bad treatment or unfairness that may exist in a condominium environment.” Their jurisdiction is limited to hearing of applications that allege violations of the Code.

### **Who pays for Accommodation?**

In 2009, the Human Rights Tribunal of Ontario heard two cases that dealt with the issue of who pays for the accommodation required. These cases were decided within 6 months of each other and came to two different conclusions. In both cases, the applicant was an owner of a condominium unit and made a request to the Board of Directors to allow a change to be made to the common elements to accommodate a disability. One owner requested that railings be installed and the other owner made a request for a ramp to be installed. As the changes involved common elements, the Board must approve the change. In one case, the Board approved the change immediately but advised the owner that he would have to pay for the cost of the railings as had other owners who requested the same change. In the other case, the Board refused to deal with the issue until the owner proved that the Board had a legal obligation to do so. Although these cases have similar facts, one main difference between these cases is how the Board dealt with the owner. Another difference between the cases is that when dealing with the installation of the railing, the owner, once



**Sonja Hodis, Barrister, Solicitor & Notary**  
62 Camelot Square, Barrie, Ontario, (705) 737-4403  
sonja@hodislaw.com

Other areas of practice include estate administration and disputes, property law disputes and employment law issues.

approval was received, could install the railing on his own and was clearly within the exclusive use portion of the common elements. In the case involving the ramp, the owner, even if he purchased the ramp on his own, would require the condominium to rework the slant of the walkway and cut the curb which appears not to be part of the exclusive use portion of the common elements. The installation of the ramp alone would not have accommodated the owner's needs. The end result of these two cases also differs. In one case, the Tribunal held that the owner must pay for the cost of the accommodation and commented that the request for the change was no different than a request to be able to install a hot tub or a shed on an exclusive use common element at their own cost.<sup>1</sup> In the other case, the Tribunal held that the condominium corporation must purchase, install and maintain a semi-permanent (removal) ramp at the front entrance of the owner's unit.<sup>2</sup> In addition, the Tribunal also ordered that the condominium pay the owner \$12,000.00 in respect of compensation for loss arising out of the infringement of his rights including injury to his dignity, feelings and self-respect and to hire a human rights consultant to create and establish a human rights policy and complaint mechanism.

When dealing with requests for accommodation, Boards must be alert to the human rights code issues that underlie each and every request. Boards must also pay specific attention to the location of the change being requested. Is it an exclusive use portion of a common element? Is it part of the common elements generally or is it a mixture of both? As these cases illustrate, Boards would be wise to seek legal advice early on in the process in order to evaluate the requirement of who shall pay for the accommodation.

What is expected of Condominiums when dealing with requests for accommodation?

One other very important lesson learned from the *DiSalvo* case, is that there is also a procedural duty to accommodate an individual. If that procedural duty is not fulfilled, the condominium could face similar sanctions as was imposed in this case. In *DiSalvo*, the Tribunal held that the procedural duty to accommodate "requires the [condominium] to make appropriate inquiries into the nature of the [individual's] disability related needs and give thought and consideration to the issue of accommodation, including what, if any, steps could be taken to provide accommodation." In *DiSalvo*, the condominium did not seek legal advice until

---

<sup>1</sup> See *McMillan v. Bruce Condominium Corporation No. 6*, 2009 HRT0 878 (CanLII)

<sup>2</sup> See *DiSalvo v. Halton Condominium Corporation No. 186*, 2009 HRT0 2120 (CanLII)



**Sonja Hodis, Barrister, Solicitor & Notary**  
62 Camelot Square, Barrie, Ontario, (705) 737-4403  
sonja@hodislaw.com

Other areas of practice include estate administration and disputes, property law disputes and employment law issues.

after the Human Rights application was filed. Prior to this time, the condominium made the following mistakes:

- ✿ the board only allowed the owner to attend a board meeting to discuss the issue of accommodation after the owner provided, at his own expense, a legal opinion with an Ontario ruling dealing with the subject matter of the owner's request for accommodation
- ✿ the board, before allowing the owner to attend a special meeting of the board to deal with the accommodation issue, insisted on a legal opinion being provided even though the owner advised he could not provide one but offered to bring someone from the Centre for Equality Rights in Accommodation
- ✿ the board did not have any substantive discussions with the owner about his need for accommodation until some 13 months later.
- ✿ the condominium held its AGM and the Board advised the owner that the Board would be making a presentation at the AGM about the accommodation issue. The Board provided the owner with a copy of the remarks that would be made. The Board invited the owner to make a statement at the AGM provided that he also gave a copy of his remarks in advance of the AGM. The owner was told that he would be able to speak in any event during the question period. The owner attempted to make comments during question period but was prevented from doing so.

The Tribunal found that the condominium took a position that was wrong in law, failed to consider alternatives and created a barrier to substantive discussions. By attempting to shift the burden of inquiry from the condominium to the owner it prevented substantive discussions from taking place and imposed improper steps on the owner as a precondition to having substantive discussions with him. As a result of these actions, the condominium failed to meet its procedural duty to accommodate. It is clear from this case that condominiums have an obligation to conduct their own inquiry, at their own cost, into their obligations under the Code. Boards must be very careful how they deal with individuals when they make requests for accommodation. Boards would be wise to be proactive in their approach.

### Single Family Occupancy Provisions in Declarations

A recent decision from the Ontario Court of Appeal in Nipissing Condominium Corporation No. 4 v. Kilfoyl has upheld the Superior Court judgment which



**Sonja Hodis, Barrister, Solicitor & Notary**  
62 Camelot Square, Barrie, Ontario, (705) 737-4403  
sonja@hodislaw.com

Other areas of practice include estate administration and disputes, property law disputes and employment law issues.

declared that an occupancy provision in the condominium's declaration that restricts the use of the units to a one family residence does not violate s. 2(1) of the Human Rights Code. In this case, the owner was renting his units to multiple students who were not living together because of some familial connection. The condominium commenced a s. 134 application against the owners and the occupants. The Superior Court of Justice granted the s. 134 order and declared that the owner was in breach of his obligations under s. 119 of the Condominium Act and that the occupants were in breach of the provision in the declaration. After the release of the Court of Appeal decision, a consent order was obtained in Nipissing Condominium Corporation No. 4 v. Simard. Both Mr. Simard and Mr. Kilfoyl have filed an application before the Human Rights Tribunal. Mr. Kilfoyl's application was dismissed. Mr. Simard's application is still pending. As the new system to deal with Human Rights Complaint provides an applicant with easy access, no investigative involvement prior to a case being sent to a hearing and free access to the system and legal representation, Condominium Boards must re-evaluate their approach when dealing with issues that have a Human Rights Code element. The obligations of condominiums under the Human Rights Code must be taken seriously. Here are 10 suggestions to help condominiums deal with their obligations:

1. Establish a policy against discrimination and harassment
2. Establish an in-house complaints procedure
3. When renovating consider current and future accessibility issues
4. When faced with a request for accommodation, investigate the possibilities and have substantive discussions with the person making the request
5. Don't be passive or obstructive in your dealings with Human Rights issues.
6. Review your Rules, Bylaws, and Declaration to ensure that potential human rights code violations are not contained therein.
7. Be consistent in your enforcement of your Rules, Bylaws and Declaration.
8. Consider buying Human Rights Defence insurance to cover the cost of defending claims as the Human Rights Tribunal has no jurisdiction to award costs in your favour even if you are successful in defending a claim.
9. Clearly document your efforts and communications with individuals when trying to accommodate their needs.
10. Get legal advice early on in the process. Consult a lawyer as soon as the Board is aware that there is a potential human rights code issue. This can help a Board ensure they are fulfilling their procedural duty obligations under the Human Rights Code.

**NOTE:** This article is provided as an information service and is a summary of current legal issues. The article is not meant as legal opinions and readers are cautioned to not act on the information provided without seeking legal advice with respect to their specific unique circumstances. Sonja Hodis, 2011 All Rights Reserved.