

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.

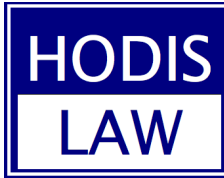
Planning Your Human Rights Defence Strategy

By Sonja Hodis

The first question one may ask is why do you need to develop a Human Rights Defence Strategy. The answer is simple. The instances of requests for accommodation under the Human Rights Code is rising. At some point in time you are likely to face a situation where an owner or occupant of a unit makes a request for accommodation under the Human Rights Code. In order to avoid ending up at the Human Rights Tribunal defending a claim you need to develop a strategy that will help prevent you from having to justify your actions at the Tribunal. Second, if you do end up at the Human Rights Tribunal you need to be prepared to defend your actions or inactions and the only way to do that is to start planning your defence to a potential claim once a request for accommodation is made or your obligation to accommodate arises. Third, in the condominium context, you will want to protect your ability to enforce your governing documents if the request for accommodation is made in the context of a breach of your Rules, Declaration and/or Bylaws or the Condominium Act itself. In my practice, I am seeing more instances of unit owners/occupiers using the Human Rights Code as a defence to a condominium corporation's attempts to enforce the rules. If this is the case, you will need to plan how you will deal with the enforcement issue and the Human Rights issue which includes which venue the matter will be adjudicated. While the Human Rights Tribunal and the courts can deal with human rights issues, the Human Rights Tribunal can not deal with enforcement of the condominium's governing documents. In order to minimize costs and avoid conflicting decisions, you want to avoid a duplicity of proceedings and maintain control of where the issues are adjudicated.

In order to plan your Human Rights defence strategy, you must first understand the obligations and rights you have as a condominium corporation as well as the rights and obligations of the person making the request for accommodation.

As a condominium corporation, you have procedural and substantive obligations. Procedurally, you must take reasonable steps to ascertain whether or not the person making the request for accommodation has a disability as defined in the Human Rights Code. You must then take reasonable steps to determine what their disability related needs are and what type of accommodation is requested or needed. Substantively, if the person making the request can establish a disability and disability related needs you have an obligation to accommodate to the point of undue hardship. You have the right to ask questions and obtain medical information from the person who makes the request for accommodation



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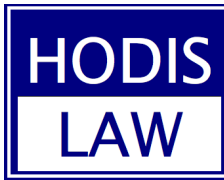
as long as your requests and questions are made for the purpose of determining if that person has a disability and what their disability related needs are.

As a person making a request for accommodation you also have obligations and rights. The onus is on the person making the request for accommodation to establish that they have a disability as defined under the Code. They also have the onus of showing that an imposed requirement (such as a rule) adversely affects their disability or that they have a disability related need. The accommodation process is a shared responsibility. The person making a request has an obligation to participate in the process and discussions regarding accommodation solutions. They have an obligation to provide medical information and documentation that supports their claim of a disability and their disability related needs and to answer questions about their disability and disability related needs. The person making the request for accommodation can not shield behind privacy rights to avoid disclosing relevant medical information. If the person who makes a request for accommodation fails to fulfill their obligations as described above, they will be deemed to have failed to cooperate and the substantive duty to accommodate will not be triggered. A good example of where a lack of participation and cooperation by the person making the accommodation request led to the result that the condominium's duty to accommodate was not triggered and the condominium corporation was able to enforce its 25 pound limit for pets is SCC 89 v. Dominelli et al, a 2015 decision from the Ontario Superior Court of Justice.

Based on my experience as legal counsel for numerous condominiums dealing with accommodation requests, I have prepared the following general checklist outlining steps a condominium corporation should consider when planning a human rights defence strategy. Although this list is not exhaustive and certain situations will require additional steps to be taken, the list will provide you with the basis on which to deal with requests for accommodation. As claims for accommodation can be difficult to manage especially in connection with an enforcement issue, you may want to engage legal counsel who has experience with human right issues and condominium enforcement issues at an early stage to assist you with the development of a strategy for your particular situation.

Human Rights Defence Strategy Checklist:

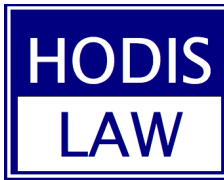
1. Any request for accommodation (whether made formally or informally) should be taken seriously and treated as a legitimate request unless proven otherwise. If the request has not been made in writing ask the owner or occupant to put their request in writing to the Board. Ask them to



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- outline what their disability is, their disability needs and why they are requesting accommodation. Encourage them to provide any supporting medical documentation.
2. Undertake an investigation to determine if the request for accommodation is legitimate. All communication should be in writing and if there is oral communication, it should be followed up in writing immediately.
 3. If the person who is making the request is not an owner of a unit, be sure to involve the owner of the unit in the process.
 4. Meet with the person who is requesting the accommodation as quickly as possible. Ask them to provide the necessary medical information to establish their disability and disability related needs. Be very accommodating to the person who makes the request for accommodation with respect to time and place of the meeting in order to facilitate a meeting as soon as possible. Do not create an obstacles that would make the scheduling of a meeting difficult. After the meeting has taken place, send a letter to document the discussion that took place at this meeting.
 5. Remember that the information you are being given is sensitive and requires that a board of directors and property management keep that information confidential. No one other than board members, property management and the corporation's lawyer needs access to this information. Be sure to implement procedures to keep the information provided secure and confidential.
 6. Question the medical information you are provided. A simple doctors note that states that a person has a "medical condition" is not enough to permit an owner/occupant to receive an accommodation or an exception to a rule. You need to obtain information that clearly outlines what the person's disability is and what their disability related needs are.
 7. If you have not received satisfactory medical documentation to establish a disability and an explanation of disability related needs, explicitly ask for the information in a clearly written letter. Follow up in writing several times, if needed.
 8. Continue an open dialogue with the person who is making a request for accommodation. This dialogue should be conducted in writing.



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9. If you do not understand what is satisfactory medical documentation seek the assistance of legal counsel with experience in these type of matters.
10. Once you have received the necessary information or if you have not received the necessary information despite several written requests for same, evaluate the information received to determine whether or not the person making the request for accommodation has satisfied their onus to establish their disability and disability related needs.
11. Evaluate if the disability related needs provided need accommodation. Remember that wishes or preferences are not protected under the Human Rights Code.
12. Once you have made a decision as to whether or not you are going to accommodate and/or the degree to which you are prepared to accommodate, document your decision and an explanation for it in writing which is sent to the person who is requesting the accommodation. If the person is not the owner of the unit, be sure to copy the owner of the unit as well.
13. If an agreement is reached between the condominium corporation and the person requesting accommodation (and in cases where this person is an occupant and not an owner, the owner of the unit as well) regarding the type of accommodation agreed upon. Be sure to document the agreement reached and every parties responsibilities. Have all parties sign the agreement. The agreement should then be placed in the unit file.

Claims for accommodation can be difficult to handle. However, with a defence strategy in place at the time a request for accommodation is made, condominium boards and property management will have a roadmap to ensure that they are fulfilling their legal obligations under the Human Rights Code.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the *Condominium Act, 1998* and other legislation that affects condominiums such as the Human Rights Code. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja has also gained recognition for creativity and tenacity in ground breaking human right caselaw in the condominium industry. Sonja can be reached at (705) 737-4403, sonja@hodislaw.com or you can visit her website at www.hodislaw.com or watch her videos at www.condoinmotion.com.

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