

**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.

## **When It's Okay To Play Pet Detective**

By Sonja Hodis

The instances of condo residents improperly using “medical reasons” to escape the enforcement of pet restrictions found in condo declarations or rules is on the rise.

On one hand, many property managers and boards of directors are fearful of investigating and challenging these types of claims, even when they think the claim is illegitimate. On the other hand, they want to fulfill their statutory duties and consistently enforce condo rules to avoid setting unwanted precedents.

A recent case (in which the article author acted for the condo corporation) provided much-needed guidance for property managers and boards of directors who find themselves in these situations. It confirmed what a reasonable investigation looks like as well as the basis for denying an illegitimate request for accommodation.

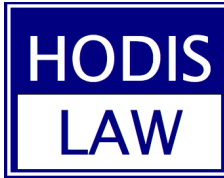
In **SCC 89 v. Dominelli et al.**, the condo corporation had a rule which restricted the size of dogs and cats permitted in the building to those weighing less than 25 pounds. The owner and his fiancé (hereafter also referred to as “residents”) had a dog that weighed more than 25 pounds.

When asked to remove the dog, the owner advised that the dog was required for his fiancé’s job, which involved working with children with autism. The board met with the residents to discuss the issue and the residents confirmed that the dog was required as a therapy dog for children with autism.

At that point, the owner properly requisitioned a meeting to try to amend the rule, but the motion to amend the rule was defeated. Afterwards, the board advised the owner that the dog had to be removed as it did not service someone who resided at the condo.

The residents then said, for the first time, that the dog was a therapy dog required for the fiancé’s own medical issues. The board asked the residents for medical documentation to support their new claim and requested a second meeting with them to discuss the request for accommodation.

The residents refused to meet with the board, but the fiancé provided several letters from a doctor advising that the fiancé had a “medical condition” and required the dog for her own well-being.



**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.

However, the letters failed to provide any objective medical evidence of a disability recognized under the Human Rights Code, the fiancé's disability-related needs and how a dog weighing more than 25 pounds was required to address those needs. Nor did the medical reports provide any clear diagnosis, citing only symptoms the fiancé was experiencing.

The board denied the request for accommodation and provided the residents with detailed reasons for its decision. On this basis, the board advised the residents that if the dog was not removed by a certain date, it would commence a compliance application.

The residents failed to remove the dog, so the condo commenced a court application for compliance. Following this, the fiancé filed a Human Rights Tribunal application, which was stayed pending the outcome of the court action.

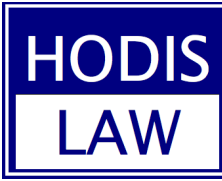
The court agreed with the board's decision that there was insufficient evidence to establish that the fiancé had a diagnosed mental disability under the Human Rights Code or to suggest that a dog weighing more than 25 pounds was required to meet a disability-related need.

The court granted a compliance order under section 134 of the Condominium Act and ordered the dog removed. The court also held that the condo had not breached any provision of the Human Rights Code. Plus, the court ordered the residents to pay \$45,750 in costs.

Ultimately, in **SCC 89 v. Dominelli et al.**, Justice Quinlan confirmed the quality and type of medical evidence that residents must produce in cases where they are claiming that they should be exempted from their condo's pet rules for mental disability reasons. Justice Quinlan also confirmed that unless a resident provides the necessary evidence and cooperates in the accommodation process, the condo corporation has satisfied its duty to accommodate under the Human Rights Code.

Boards and property managers must deal with accommodation requests promptly to meet their procedural duties under the Human Rights Code. However, this doesn't preclude them from questioning the information they are being provided and investigating further — especially if they have concerns.

**SCC 89 v. Dominelli et al.** reassures boards and property managers that they are allowed to request proper medical documentation before they decide whether to allow an exception to the rules. The decision also gives condo boards the confidence that in cases of insufficient evidence of a disability, or a disability-



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

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

related need for an exception to the rules, they can deny the request for accommodation and proceed with a court application for compliance.

Dealing with issues of compliance in the face of requests for accommodation is not easy. Boards and property managers are wise to obtain legal advice early on in the process.

**SCC 89 v. Dominelli et al.** teaches residents who are making requests for accommodation that they must be prepared to provide objective medical evidence that diagnoses the disability and outlines the disability-related need and how an exception to a rule is required to address the disability-related need. A doctor's letter that states someone has a "medical condition" without a clear diagnosis and a listing of disability-related needs isn't enough.

Residents must also be prepared to cooperate in the process and respond to reasonable requests for information or attend meetings. Otherwise, the courts may find that the condo corporation has fulfilled any duty to accommodate by attempting to discuss and investigate the request for accommodation with the resident.

Lastly — and especially with cases of illegitimate accommodation claims aimed at averting pet rules on the rise — residents should be aware that they face significant cost orders if a condo corporation gets a compliance order after denying a request for accommodation.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She was legal counsel to SCC 89 in the above case. 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](mailto:sonja@hodislaw.com) or you can visit her website at [www.hodislaw.com](http://www.hodislaw.com) or watch her videos at [www.condoinmotion.com](http://www.condoinmotion.com).

*The preceding article originally appeared in the September 2015 issue of CondoBusiness.*

**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, 2017, All Rights Reserved.