

CONDO ADVISER WEBINAR
(EPISODE 33)

DEEP DIVE ON HUMAN RIGHT ACCOMMODATIONS

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LEADING THE INDUSTRY



CONDO ADVISER CREW

Speakers	Firm
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AGENDA

Topic
Duty to enforce condo rules
Human Rights Legislation
Duty to accommodate
Undue Hardship
Duty to accommodate disability, not preferences
What medical evidence can we ask for?
HRTO v. CAT
A couple of cases

DUTY TO ENFORCE CONDO RULES

(DAVID)

- **S. 17(3):** Duty to take all reasonable steps to ensure compliance with the Act, the declaration, the bylaws and the rules. /
- **S.119(3):** right to require that a person who is required to comply with this Act, the declaration, the by-laws and the rules shall do so.
- **Not a free for all ([Metropolitan Toronto Condominium Corporation No 933 v Lyn](#), 2020 ONSC 196):**

[28] As with living in any community, condominium owners and their guests must enter a social contract which relinquishes their absolute interests to do as they please with their real property, and instead balance their interests with those of the other owners and tenants. [...]

[30] To summarize the foregoing principles, where someone chooses to live in a condominium community – whether as an owner or a tenant – they do not enjoy unlimited freedom to do as they please. Rather, they must conduct themselves in accordance with the rules of the community and with due respect and consideration for their neighbours and fellow residents. Further, they must govern and limit their personal activities taking into account the impact of those activities upon other residents, as regulated by the condominium rules.

HUMAN RIGHTS OVERVIEW

(GRAEME)

- **Governing legislation is the Ontario *Human Rights Code***
- **The Code protects people in Ontario from *discrimination vis-à-vis* certain “social areas”:**
 1. Services
 2. Contracts
 3. Employments
 4. Professional associations;
 5. Housing
- **What is “discrimination”? – No definition in the “Code”**
 1. The individual has a characteristic protected from discrimination;
 2. They have experienced an adverse impact within a protected “social area”; and
 3. The protected characteristic was a factor in the adverse impact.

HUMAN RIGHTS OVERVIEW CON'T

(GRAEME)

- **What characteristics are protected by the Code?**
 1. Also known as “protected grounds”
 2. race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.
- **How is the Code enforced?**
 1. The Human Rights Tribunal is responsible for resolving claims of discrimination and harassment under the *Code*.
 2. Can hold mediations, hearings, and make orders, including for financial compensation.
 3. HRTTO has concurrent jurisdiction with the Superior Court of Justice

WHAT IS A DISABILITY

(ROD)

- Can be triggered by age, accident, injury, illness
- Can be transitory in nature
- **Physical disability:** physical disability, infirmity, malformation, disfigurement, paralysis, amputation, blindness, deafness, muteness, **physical reliance on a service animal**, wheelchair or other device
- **Mental Disability:** A mental impairment, developmental disability, learning disability, mental disorder

WHAT IS A DISABILITY

(ROD)

- There needs to be a:
 - « working diagnosis »
 - of a « recognized mental disability »
 - or an « articulation of clinically-significant symptoms »
 - with « specificity and substance »

SCC 89 v. Dominelli, 2015

SERVICE AND EMOTIONAL SUPPORT ANIMALS

(ROD)

- **Service animal is**
 - usually one easily identifiable as relating to the disability
 - one providing physical reliance
 - Trained to perform specific tasks for people with disability
 - Usually certified
- **Emotional support animal:**
 - provides comfort and security
 - Not trained for a specific task
 - Do not need to be certified

DUTY TO ACCOMMODATE

(ROD)

What is the duty to accommodate?

- 1. Procedural duty:** Includes the duty to
 - Listen and acknowledge the individual needs;
 - Inquire about the accommodation needs
 - Investigate options;
 - Communicate in a timely and respectful manner
 - Keep the process moving
 - Give an answer
 - Explain why the accommodation is granted or denied
- 2. Substantive duty**

DUTY TO ACCOMMODATE

(ROD)

What is the duty to accommodate?

1. **Procedural duty**
2. **Substantive duty:** includes the requirement to actually put in place a reasonable accommodation, unless “undue hardship” would result from it.

Impossible to make an exhaustive list of all options falling under this duty.

Will vary in each case. Can include:

- moving a parking spot;
- installing a ramp;
- granting alternate access to the gym;
- allowing a service or emotional support animal
-

UNDUE HARDSHIP

(DAVID)

3 Considerations (and no others)

1. Cost

- The Supreme Court of Canada has said that, “one must be wary of putting too low a value on accommodating the disabled. It is all too easy to cite increased cost as a reason for refusing to accord the disabled equal treatment.” The cost standard is therefore a high one.
- Must be quantifiable (financial statements, scientific data, expert opinions, etc.) and so substantial that they would alter the essential nature of the enterprise, or so significant that they would substantially affect its viability

2. Outside Source of Funding

3. Health and Safety Requirement

* Factors such as *inconvenience*, *morale* and *preferences* are not valid considerations in assessing whether an accommodation would cause undue hardship.

UNDUE HARDSHIP

(DAVID)

Undue Hardship on whom?

- Inquiry into undue hardship is generally focused on the hardship on the corporation
- In some circumstances, an accommodation can impact individuals other than the Corporation or the person requiring the accommodation.
- Will it have an impact on individual employees, tenants, or condominium owners and occupiers?
- Such an impact should be considered in the assessment of whether the accommodation can be provided without undue hardship.

[Tamo v. Metropolitan Toronto Condominium Corporation No. 844 et al](#)

DUTY TO ACCOMMODATE PREFERENCES?

(GRAEME)

- **According to the OHRC Abelism Policy:**

...human rights case law makes it clear that the purpose of the [Code](#) is to accommodate a person's needs, not their preferences. This statement is supported by the case law cited as authority for it. (see also *Graham v Underground Miata Network*, 2013 HRTO 1457)

If there is a choice between two accommodations that respond equally to the person's needs in a dignified way, then the accommodation provider is entitled to select the one that is less expensive or less disruptive to the organization. (see also *Ellis v. General Motors of Canada Ltd.*, 2011 HRTO 1453)

- **Application to CondoLand: *Martis v PCC No 253*, [2021 ONCAT 110](#)**

1. Owner's son had medical requirement for emotional support animal;
2. Condo had a no pets rule;
3. The dog was a 60-70 pound Labrador
4. Tribunal found that the condo could not use its Rule to impose a weight restriction on the dog; however the condo could impose "reasonable conditions" on the accommodation under the *Code*, including weight.

WHAT MEDICAL EVIDENCE CAN WE ASK FOR (ROD)

What the accommodation seeker must provide

- Must advise of the existence of a disability and of the accommodation being sought
- Must cooperate and participate in the accommodation process
- Must facilitate the search for an accommodation
- Must respond to reasonable requests for information to show the accommodation needs

WHAT MEDICAL EVIDENCE CAN WE ASK FOR (ROD)

The type of information the condo corporation is entitled to seek:

- That the person has a disability
- The limitations or needs associated with the disability
- Whether the person can perform essential duties/requirements of a condo occupant
- The type of accommodation that may be needed
- Adequate alternatives to the accommodation being sought
- Regular updates
- In certain cases, confirmation or additional info from qualified health care professionals

WHAT MEDICAL EVIDENCE CAN WE ASK FOR (ROD)

How to handle the information provided

- The information requested must be the least intrusive of the person's privacy
- Info must be kept confidential
- Only provided to people who need to be aware of the information

HRTO v. CAT

(DAVID)

- The ***Human Rights Tribunal of Ontario*** (HRTO) is an independent, specialized and expert ***administrative tribunal***, set up to process, mediate and decide human rights cases. However, many different courts, tribunals, and other administrative decision makers can also decide human rights issues under the ***Human Rights Code*** (*Code*).
- This is because of a legal concept known as ***concurrent jurisdiction***. This means you often have a choice about which ***legal forum*** to use to enforce your human rights case. In some cases, you may be able to choose more than one legal forum while, in other cases, you may be able to choose only one.
- CAT can hear human rights claims as they relate to the jurisdiction of the CAT.

PRACTICAL EXAMPLES

- **Service and Support Animals**

Martis v. PCC 253, 2021 ONCAT 110

- **Scooter:**

Jakobek v. Toronto Standard Condominium Corporation No. 1626, 2011 HRT0 1901 (CanLII)

- **Accessibility Issues (ramp cases)**

McMillan v. Bruce Condominium Corporation No. 6, 2009 HRT0 878

DiSalvo v. Halton Condominium Corporation No. 186, 2009 HRT0 2120 (CanLII)

- **Medicinal Cannabis**

NEXT WEBINAR

- **Next webinar :**
Wednesday, June 1
- **Info will posted on CondoAdviser.ca**
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Wednesday, June 1, 2022






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