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Legal Duty to Accommodate

Mental health issues in condominiums: Steps to obtain psychiatric assessment

By **Danielle Swartz**

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(September 11, 2019, 9:19 AM EDT) -- The prevalence of mental illness in Canada cannot be emphasized enough.

According to the Centre for Addiction and Mental Health (CAMH), by the time Canadians reach the age of 40, one in two will have, or have had, a mental illness. Moreover, in any given year, CAMH reports that one in five Canadians will experience a mental illness or an addiction problem.

With condominium living on the rise, understanding mental health issues and how they may impact residents living in a condominium is crucial. Failure by board members to take the appropriate steps right from the outset could result in unnecessary increased costs and court proceedings.

In Ontario, condo corporations have a legal duty under the *Human Rights Code* to accommodate any individuals suffering with a disability up to the point of undue hardship. Disability is defined broadly under the Code and includes a mental disorder, a condition of mental impairment or a developmental disability.

In addition to the legal duty to accommodate under the Code, condo corporations are obliged under the *Condominium Act, 1998* to take all reasonable steps to ensure owners and the occupiers of units in a condominium comply with the Act and their corporation's governing documents.

As compliance with the Code has priority over the Act, condo corporations are required to accommodate any individuals suffering from a disability, even if such individuals are engaging in conduct that may violate the Act or their condominium's declaration, bylaws or rules.

The duty to accommodate involves two components: one procedural and the other, substantive. Under the procedural component, condominium corporations are required to obtain all relevant information about an individual's disability for the purpose of determining how best they can meet their obligation to accommodate. The substantive duty on the other hand looks at the reasonableness of the condo corporation's chosen accommodation, or their reasons for not providing accommodation, should undue hardship become a result.

Where a resident is incapable of caring for themselves or their unit and has no family members or other caregivers that can assist in this regard, and the resident is engaging in conduct that presents a danger to themselves or others, condo corporations may consider obtaining a psychiatric assessment for the purposes of having a guardian appointed to manage the resident's property.

Obtaining a psychiatric assessment may also assist the condo corporation in meeting its procedural duty by gathering as much information as it can on the resident's mental illness in order to determine the type of accommodation that is required to fulfil its duty under the Code.

Psychiatric assessments

Condo corporations can obtain a psychiatric assessment for a resident suspected of suffering from a mental disorder either through: (i) a justice of the peace; or (ii) a police officer.

Under s. 16 of the *Mental Health Act*, condo corporations can appear before a justice of the peace to obtain an order for a mental health examination. To obtain this order, the condo corporation must provide sworn information that would provide the justice of the peace with reasonable grounds to believe that the resident is suffering from a mental disorder that may result in serious bodily harm to themselves or others or cause serious physical impairment of the person. If satisfied with the evidence, the justice of the peace can issue an order in a prescribed form (known as a Form 2), which authorizes police officers to transport an individual to a hospital for examination by a physician.

If it would be too dangerous to proceed under s. 16, police officers have authority under s. 17 of the *Mental Health Act* to take a resident who appears to be suffering from a mental disorder in custody to a hospital to be examined by a physician. The police officer must have reasonable and probable grounds that there is a risk that the resident will cause bodily harm to themselves or others and that the resident is suffering from mental disorder that will likely result in serious bodily harm to themselves or others or cause serious physical impairment of the person.

Once an individual is taken to the hospital, the attending physician has authority to make an application for a psychiatric assessment. The physician must have reasonable cause to believe that the resident is at risk to cause bodily harm to themselves or others and must be of the opinion that the resident is suffering from a mental disorder that will likely result in serious bodily harm to themselves and others or cause serious physical impairment of the person. If satisfied, the physician can make an application for a psychiatric assessment by signing a Form 1, which will direct any person to take the resident subject to the application in custody to a psychiatric facility and to detain that resident to examine them for a maximum of 72 hours. The executed Form 1 is valid for seven days from the date of signing.

After 72 hours, the resident can either be released, invited to stay as a voluntary patient or detained involuntarily for another 14 days where the physician signs a certificate of involuntary admission, known as a Form 3.

Upon admission to a psychiatric facility, s. 54 of the *Mental Health Act* permits the physician to examine the resident’s capacity to manage property. If the physician determines that the patient is not capable of managing property, they will issue a certificate of incapacity in the approved form, and the officer in charge for administration and management of a psychiatric facility will transmit the certificate and a financial statement in the required form to the Public Guardian and Trustee.

The goal of the psychiatric assessment is ultimately to secure a guardian of property for the resident. If the resident’s capacity is assessed and they lack capacity to manage property, then the Office of the Public Guardian and Trustee will be notified and automatically become authorized to manage property.

While capacity assessments are possible outside of the statutory provisions of the *Mental Health Act,* the resident would need to consent and the costs for doing so may be prohibitive.

While condo corporations may consider applying directly to the court for an order that the resident undergo a mental health examination, recent case law suggests that this order will only be given in exceptional circumstances. Where there is no evidence that the owner’s mental health is relevant to the material issues in the proceeding, courts will be reluctant to make the invasive order that an individual undergo a mental health examination

While there is no one-size-fits-all solution to handling mental health issues in condo corporations, understanding the duty to accommodate and the options available to satisfy it, is a starting point to avoid potential liability and costly litigation.

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