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HUMAN RIGHTS GUIDE

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A PRACTICAL GUIDE TO HUMAN RIGHTS FOR CONDOMINIUM CORPORATIONS

Condominium Corporations are responsible for complying with the Ontario Human Rights Code (the “Code”) in a variety of different capacities: as an employer, non-profit business entity, and housing provider. As part of their obligations under the Code, Corporations are required to respect and accommodate the human rights of their workers and residents to the point of undue hardship. The threshold for what is “undue hardship” is a complex legal matter, requiring a detailed review of the unique factors of each situation.

This pamphlet provides practical information that Corporations should know about the human rights issues they may encounter.

HUMAN RIGHTS CODE

The Code gives all people equal rights and protection from discrimination in the areas of:

- Accommodation (housing)
- Contracts
- Employment
- Goods, services and facilities
- Membership in unions, trade, or professional associations

Employees, contractors, residents, and volunteers are all covered under the Code. In their capacities as employers, Corporations can be liable for violations of the Code committed by their employees or agents regardless of whether the violation is direct or indirect, intentional or unintentional. As a result, it is important for those working or acting for Corporations to understand their human rights obligations, and for complaints to be resolved appropriately.



PROHIBITED GROUNDS OF DISCRIMINATION

Under the Code, individuals are protected from discrimination on the following grounds:

- Age
- Ancestry, colour, race
- Citizenship
- Creed
- Disability
- Ethnic origin
- Family status
- Gender identity, gender expression
- Marital status (including single status)
- Place of origin
- Receipt of public assistance (in housing only)
- Record of offences (in employment only)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation

Freedom from discrimination is the ability to be judged and carry out one's affairs based on a person's individual qualities and capabilities rather than on stereotypes or assumptions. While the Code does not define discrimination, it typically involves:

- Denying benefits
- Excluding people
- Imposing burdens
- Making stereotypical assumptions based on presumed traits
- Not assessing a person's unique merits and circumstances



Discrimination can exist even where the impact is unintentional or indirect. For example, discrimination exists where a rule fails to take into account that an individual's race, gender, religion, or level of ability results in a barrier to access.


Corporations should be alert to discrimination even if someone has not explicitly raised a concern. Some individuals may be afraid of speaking out against discrimination and many feel powerless due to that victimization. Corporations should make it clear that discrimination is not tolerated so that aggrieved individuals feel comfortable coming forward with their concerns.

DISCRIMINATORY HARASSMENT

Discriminatory harassment is engaging in vexatious comments or conduct that is known or ought to be known as unwelcome based on one or more of the Code's prohibited grounds. Discriminatory harassment can take the form of singular events or prolonged patterns of behaviour which has the effect of demeaning or marginalizing someone.

Sexual harassment is a type of discriminatory harassment where an individual engages in vexatious comments or conduct against someone due to their sex, sexual orientation, gender identity, or gender expression, where the comment or conduct is known or ought to be known as unwelcome. Sexual harassment can also take the form of unwelcome advances from someone who has the power to reward or punish an employee who is subject to the advances.

Discriminatory harassment is not a concept limited to the workplace. Rather, it's still prohibited when it involves residents, suppliers, and/or Corporation staff as well.



Regardless of its type, harassment is treated very seriously under Ontario law. Corporations must develop and maintain a program and policy to prevent discrimination and harassment that, among other things:

- Includes measures and procedures to report incidents of discrimination and/or harassment
- Sets out how complaints of discrimination and/or harassment will be investigated and dealt with
- Sets out how information obtained about the complaints will not be disclosed unless the disclosure is necessary for the purposes of investigating, taking corrective action, or is required by law
- Demonstrates the Corporation's commitment to addressing discrimination and harassment

DUTY TO ACCOMMODATE

Accommodation is the process of ensuring that individuals are not unfairly excluded from opportunities and have equal access to a given environment. Corporations must provide reasonable accommodation for the needs of Code-protected individuals to the point of undue hardship. Accommodations are considered reasonable and appropriate if the person has the opportunity to enjoy the same benefits, privileges, and accessibility as others.

Accommodations are particularized to the individual and are therefore wide-ranging in form. For example, in some instances a proposed accommodation may involve altering the Corporation's structure to provide greater accessibility, such as by installing ramps, hand rails, or automatic door openers. Other proposed accommodations are less tangible, such as modifying job duties or exempting a person from a provision in the Corporation's governing documents.



Although a Corporation has a statutory duty to comply and enforce compliance with its governing documents, the Code takes precedence over all of a Corporation's governing documents. For example, in order to accommodate an individual with a disability, a Corporation may be required to exempt that individual from a particular rule, such as a pet weight restriction or a prohibition against smoking cannabis. This does not, however, preclude the Corporation from enforcing against others.

The accommodation process is mutual and collaborative. While Corporations should discuss accommodation measures with the individual in good faith, the Code only requires reasonable accommodation, not preferred or ideal accommodation. Thus, an open mind towards reaching a mutually agreeable compromise is required from all parties.

Accommodation can be a deceptively complex area of the law which requires a careful review of each request to make an appropriate determination.

ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT

The Accessibility for Ontarians with Disabilities Act ("AODA") establishes standards for barrier-free accessibility of accommodation (housing), buildings, employment, facilities, goods, and services. AODA's objective is to make Ontario fully accessible by 2025.

All Corporations must comply with AODA to accommodate the disability needs of its workers and residents. Newer Corporations are typically created with accessibility in mind. However, older Corporations may encounter situations where the building does not align with accessibility standards. In that case, the Corporation may eventually have to undergo certain renovations to accommodate the needs of residents or employees.



Under the AODA, Corporations must:

- Establish and maintain accessibility policies
- Establish and maintain a multi-year accessibility plan outlining a strategy to meet accessibility requirements
- Document the accessibility policies and make them publicly available
- Review and update the accessibility policies every five years

AODA also requires that Corporations, regardless of their size, provide training regarding AODA's accessibility standards and the Code to:

- Employees
- Volunteers
- Persons who provide goods, services, or facilities on behalf of the organization (i.e. management, concierge, etc.)

The training must include details on:

- The purpose of AODA
- The Corporation's policy on accessible customer service
- How to interact with people with various types of disabilities
- How to interact with people who use an assistive device or require the assistance of a service animal or support person
- Information on how to use any equipment or devices to help provide goods, services or facilities to people with disabilities
- What to do if a person with a disability is having difficulty accessing the Corporation's goods, services, or facilities

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We are committed to helping our clients make informed decisions and create strategies to successfully resolve condo issues.

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