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Editor: Andrea Lusk

Ignoring harassment not an option for condo boards

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April 13, 2016 was International Day against Bullying, Discrimination, Homophobia, Transphobia, and Transmisogyny, better known as the “International Day of Pink.” A recent Ontario Human Rights Tribunal decision demonstrates that condo boards must apply the Day of Pink concepts every day of the year.

In *Welykyi v. Rouge Valley Co-operative Homes Inc.*, the Tribunal chastised a co-operative housing corporation for not responding seriously, swiftly or effectively to a series of nasty, discriminatory and offensive messages against specific residents distributed by unknown perpetrators. The 10 affected residents each made a human rights complaint to the Tribunal that were heard together and addressed in a single decision. From April to September 2012, almost twenty extremely offensive messages were distributed by an unknown perpetrator in the form of flyers left throughout the building or posted in common areas or to specific unit doors. Many messages were delivered by vandalism, through messages written onto elevator walls and doors and the applicants’ unit doors.

The offensive messages targeted 10 specific residents of the community. The Tribunal included one sample message in its decision, but characterized all of them as follows:

These messages referred to the applicants in terms related to the prohibited grounds of disability, race, sex, gender identity, ancestry, age and receipt of public assistance. The content of these messages are truly heinous and display a shocking level of ignorance and intolerance.

The Tribunal found that the co-op board undertook minimal steps to redirect security cameras so as to dissuade or catch the offenders and so the campaign of hatred persisted for months. The Tribunal also noted that the co-op had no human rights rules or policies on the books and that the board did not strongly condemn the offensive acts publicly until after the complainants enlisted an advocacy organization to intervene on their behalf to the board.

The Tribunal also found that the co-op board failed to act reasonably by working with the complainants or even acknowledging their complaints, leaving the applicants feeling vulnerable, prompting them to apply for relief to the Human Rights Tribunal. The Tribunal described the applicants’ experience as follows:

[194] The applicants were subjected to horrible harassment over a period of roughly five months. There is no doubt that this harassment was a grave affront to their dignity and that it affected them profoundly. The respondent was not responsible for the harassment, but was responsible for not addressing the harassment adequately. It is important not to conflate the harassment with the inadequate response when assessing the appropriate remedy for the applicants. The respondent’s failure to take reasonable actions to address the harassment was objectively serious. The applicants felt completely unsupported by the respondent and the harassment most likely would have ceased sooner had the respondent taken meaningful action more promptly. The applicants’ evidence indicates that they felt abandoned by the respondent and had no reason to believe the harassment would stop, since, in their view, nothing was being done about it. Ms. Welykyi’s evidence was that the respondent’s indifference was more hurtful than the harassment itself.

In the end, the Tribunal found the board’s response to be inadequate and awarded the co-op to pay the 10 complainants \$3,000 each “as monetary compensation for the infringement of their right to be free from discrimination and harassment in the occupation of accommodation, including injury to dignity, feelings and self-respect.”

In addition, the co-op was ordered to circulate the Tribunal’s decision to its residents and to post it conspicuously for six months. It seems ironic to use public shaming to educate people not to turn a blind eye to bullying and harassment, but it feels like a suitable punishment in these circumstances.

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Although this case was brought against a co-operative housing corporation it has direct application to condominium corporations, in that the governance and political issues between the two are more common than not. For instance, the Tribunal also addressed but ultimately rejected an allegation that the co-op board made a reprisal against the applicant complainants by taking the position that those applicants pursuing human rights complaints were ineligible to serve on the board. Another part of the decision described tensions between the old board and the new board that was elected somewhere in the middle of the piece. On these and other points, there are plenty of parallels between the co-op and condo worlds in this decision. It's a must-read.

While condo and co-op boards are not expected to be kindergarten teachers and referee every dispute between residents, the lesson from this decision is that boards cannot be indecisive or indifferent when a member of their community is being targeted and the board has the means to make a meaningful difference. Given that the hateful messages in this case appeared in common areas, which is the board's turf, there was no excuse for the board to shirk its duty to act decisively.

Boards can take small, simple steps that involve only tiny expenditures but can make a huge difference in scenarios like this. Some of those steps could be to:

- Accept and properly investigate complaints of anti-social behaviour;
- Acknowledge complaints and keep complainants informed and involved;
- Pass and enforce a no-harassment rule to set community tone;
- Modify security coverage or procedures to prevent or document problems; and
- Condemn anti-social behaviour in a newsletter column or posted bulletin.

The single largest failure of this co-op board was to ignore the complainants. After reading the decision, it is crystal clear that this case would not have been brought or would have been resolved earlier had the board reached out to the victims and supported them. Because the victims in this case could not identify the perpetrators, they pursued the only party who could and should have been able to protect them. By failing to take steps against the perpetrators, the board made itself an obvious target.

Condo boards have a unique position and obligation to ensure that their community remains a friendly place. This decision is clear proof that there may be serious consequences for failing to fulfil that important responsibility.

ACMO/CCI-London Conference

Four Points by Sheraton, 1150 Wellington Road South, London, Ontario N6E 1M3

Friday, July 15, 2016



**Our associate Andrea Lusk will be part of the legal panel at the
ACMO/CCI London Conference!
Be sure to say hello!**

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