



Event	Association of Condominium Managers
Location	Richmond Hill Country Club
Date / Time	Friday, May 11, 2012 Lunch: noon Speaking: 1:00 Arrival: 12:45
Contact	[REDACTED] [REDACTED]
Speech length/type	30 minutes, with Q&A
Topic	Human rights general/housing
Event format	Podium with microphone
Audience	250-300 condo managers from GTA and surrounding

Notes:

*There will be a parking spot reserved for you by the front doors

**Introduction by incoming president Dean McCabe (not confirmed)

*****CHECK AGAINST DELIVERY*****

- Hello. Thank you for inviting me here today.
- I saw in the paper this week that we are officially in the middle of a “condo craze”.
- Maybe it looks like a craze, from other places in Canada. From the GTA, though, this looks a bit like “business as usual”.
- The fact is – condos are popular because people like living in them. The good ones are like any good neighbourhood – the neighbours get along with each other and value their community.
- I’m really glad to have this opportunity to share with you some of what we know about the issues that are coming up in relation to housing and condominiums – and best practices on how to prevent and deal with human rights issues.
- When it comes to housing, condominium managers are in a unique position.
- You field all the concerns being raised by owners and you act as mediators between the board and corporation, and residents who are having concerns or requiring accommodation.
- Where human rights are concerned, you’re at the front-lines.
- You may not realize this, but discrimination in housing was one of the things that provoked people to organize and push for human rights protections in Ontario 50 years ago.

- (In June we will be celebrating the 50th anniversary of the *Ontario Human Rights Code*)
- Back then, discrimination was overt. We all know about the signs in shop windows refusing service to Blacks and Jews and segregation in public spaces.
- Did you also know that there was a stipulation in deeds prohibiting the transfer of land to “objectionable people”?
- That’s what it actually said, “objectionable people.” What it meant was Jews and Blacks.
- This kind of in-your-face racism and discrimination was the reason people fought for change. And it’s what inspired the *Code* to be introduced and the Ontario Human Rights Commission to form.
- Dan Hill, the OHRC’s first Chief Commissioner appointed to the OHRC in 1961 was a Black man who came to Canada after experiencing devastating racism in the United States.
- When he got here, he and his wife Donna couldn’t find a place to live – until a White friend posed as Donna’s husband.
- This is part of what drove them to join the fight for human rights in Ontario.
- Because of the work the Hills did, along with countless others, things have changed.

- But discrimination still lingers in many forms. And people are still fighting to for equity and inclusion.
- Now, what we tend to see is more subtle forms of discrimination that are embedded in institutions and the way people think.
- Many times it's unintentional. It's just the ways things have always been done.
- After all, many of today's institutions were built by the same people who allowed that stipulation preventing some groups of people from owning land.
- The OHRC continues the fight to remove barriers that still exist today. We do a lot of work with educators, government and police services to look at policies, procedures and day-to-day practices that leave some people out or behind.
- Transit providers across the province are now calling out stops automatically. That was a result of work we did to make sure people with visual impairments could access public transportation.
- It also helps everyone on a crowded bus, or when the windows fog or ice over in the winter.
- That was a situation where no one really noticed the impact not calling out the stops had on some people. It meant people with disabilities get out to meet with their friends, go to the doctor, or get to work.

- It was unintentional. But the people who experienced that unequal access and treatment sure felt it.
- That kind of thing happens all the time in society. And unless it's happening to you, sometimes you don't notice it, or think about it.
- In the case of condominiums, where people from all walks of life are part of the same community, these kinds of issues are bound to come up. And they can be challenging.
- You have conflicting priorities. You have individual needs and owners and boards wanting to protect their investment.
- When it comes to human rights, especially where we live, we must take concerns seriously and make efforts to ensure everyone is included.

Housing is a fundamental need we all have...

- We all need to feel safe, secure, included and welcome in our own homes. Our homes are our safety nets, our refuge.
- When human rights are ignored in a communal setting like a condominium, homes can become hostile places.
- Through consultations we've done on housing, we've heard stories from people who've been harassed and had their dignity hurt where they live - and the impact this has had on their general sense of wellbeing and ability to function on a day-to-day basis.

- That's why, since the beginning, housing has always been an area protected by the *Code*.

In the context of condominiums the *Code* applies in a number of different ways...

- You play a role in providing housing, you are employers and employees and you are providing services.
- When I say "you", I mean that as representatives of the management and decision makers, you share the legal responsibility to protect the rights of employees, contractors and residents.
- We've heard countless stories of human rights abuses in condominium settings.
- We've seen people who weren't hired because of their race, property management staff who were sexually harassed by sub-contractors, and employees with work-related needs that were not accommodated.
- Practically every type of human rights complaint has been made at some time with a condo corporation as an employer.
- Under the *Code*, people are protected under 15 grounds, including race, colour, creed (religion), nationality, sex, family status, sexual orientation and gender, place of origin and nationality and disability.
- Where condo residents are concerned, we mostly hear about issues relating to disability, family status and religion.

- In terms of family status, a common complaint is that condos either overtly or covertly exclude families with children.
- In dozens of cases, courts have ruled that “no children” rules, or regulations that limit the ages of children, are against the law in Ontario.
- This precedent was set in the case of *Dudnik v. York Condominium*. The condo had a bylaw that didn’t allow families with children from living there.
- The decision in the case, which was held up in Ontario Divisional Court, says that there is no defence that permits “adult lifestyle” housing that excludes children, or people under a certain age – advertising housing as such, or excluding people with children is tantamount to a human rights violation.
- There was one case where condo residents expected a mother to use the back entrance near garbage bins so her child would not be seen in common areas. Talk about damaging someone’s dignity!
- We are no longer seeing condos out rightly barring children. But we see rules that get in the way of families with children from equally enjoying condo facilities.
- There was a recent case where a condo wouldn’t allow a women to swim with her 10 month old, diapered baby. Even though the baby was wearing swimming diapers.
- The rules of the building stated that “persons” wearing diapers weren’t permitted to swim. But the sign in the pool area specified “children.”

- The argument of the condominium was that allowing babies to swim posed a threat to the health and safety of other residents. They couldn't prove this in court and the Tribunal found in favour of the mother.
- Not only did the Decision outline that there was no real threat to public safety. But also that the hours of swim (mostly during the day) created a situation where families didn't realistically have equal access to the pool.
- The reason for this decision and the damages of \$10,000 go beyond the issue of health and safety.
- At the heart of the matter was that the property manager hadn't responded to the mother's queries, and appropriate action wasn't taken to investigate possible solutions.
- Instead, the building suspended the existing rule, changed the wording to specifically apply to children, and then sent out a building-wide notice that said the rules had been suspended because "someone" had attempted to contravene the rule, had filed a complaint with the Human Rights Tribunal and was seeking monetary compensation.
- People in the building started to talk and treated the woman with suspicion and malice, creating a poisoned environment for her and her family.
- She moved before she and her baby were ever able to swim in the pool.
- Another area that comes up a lot is religion or creed.

- I know that some of you are dealing with accommodation requests Muslim women are making for designated female-only swim times.
- When issues like this come up it's really important to take steps to be open-minded and really look for solutions that work.
- Will a couple of hours a week of female-only swim times really get in the way of anyone else from enjoying the pool?
- A few years back a group of Orthodox Jews wanted to erect "succahs," small temporary huts, on their balconies for the 9-day Succot festival. They were told by their condo board it wasn't allowed because the bylaws prohibited outside decorations on balconies.
- The case went all the way to the Supreme Court of Canada which found that there was no evidence to suggest that setting up succas on a few balconies, for a few days a year, would devalue the property or its "harmonious" aesthetic.
- We've also seen complaints over the way condos have dealt with "funny" smoke coming from apartments, when in fact, a new resident of Aboriginal background was conducting a sacred smudging ceremony.
- Smoking cigarettes and accommodating people with environmental sensitivities is an emerging issue that society is still wrangling with.
- Where disability is concerned, we see a lot of issues come up. Often times, boards don't want to make accommodations because of perceptions about what making the accommodation would mean for the building.

- Will a ramp in the entrance way, or automatic doors make the building look like a retirement home?
- And then there are the costs often associated with removing barriers for people with disabilities. Who should pay for them?
- The point was made loud and clear in a recent case, *DiSalvo v. Halton Condominium Corporation No. 186*, that came before the Human Rights Tribunal.
- In this case, a man with muscular dystrophy need to have a ramp installed at the front door of his townhouse.
- Even though the ramp would not really fit with the required uniform look of the townhouse exterior, the condo board okayed it and agreed it was needed.
- What the board did not agree on was who would pay for the ramp. The board argued that since the ramp would only benefit Mr. DiSalvo, he should bear the costs.
- They also argued that the other 24 owners in the complex should not have to pay for something they would get no benefit from and that meeting the human rights requirement would leave them in conflict with the Condominium Act.
- The board lost on all of these key points.

- The Tribunal ruled that the areas that need to be altered to install the ramp fell within “common elements,” and should be paid for by the condo corporation and that there was no “undue hardship” in doing so.

In all of these cases, legal action (and the costs and hassle associated with them) could have been avoided if there was an accommodation process in place – and if a human rights lens had been applied to the bylaws and rules of the condo from the beginning.

- The *Code* says that everyone has the right to equal treatment and to be treated with respect and dignity.
- The “duty to accommodate” is key to creating equity and levelling the playing field so that everyone can participate.
- The OHRC’s guideline on the duty to accommodate sets out steps that must be taken in order for the legal requirement for accommodation to the point of undue hardship to be reached...
- You need to be aware that “undue hardship” is a very high standard. Saying “that will cost more than I would like to pay” will not make the grade with the Tribunal or the courts.
- They will want proof that providing an accommodation – a ramp, a closer parking spot, different pool hours – will be a genuine hardship.
- Health and safety concerns that might be posed to other people should be assessed and documented.

- Some level of financial burden to the accommodation maker is expected – and must be proven.
- The point of undue hardship might be met, for example, if a small condominium building were asked to install an elevator as an accommodation within a one year period.
- If doing so would bankrupt business, then, of course, making the accommodation is impossible.
- But – if installing the elevator is the most appropriate accommodation, the board might consider setting money aside over a number of years to install the elevator
- And find a next best solution in the meantime.
- Bylaws and rules are not an excuse to making accommodations. Human rights law trumps those.
- And most other legislation, including: the *Landlord and Tenant Act* and the *Condominium Act*.
- When someone raises a concern, you (and the board) must take it seriously and begin to look at solutions that can work for everyone.
- Is it, in fact, a human right concern? Is it related to a ground of the *Code*, or are the people involved part of a group protected by the *Code*?
- Has the person seeking accommodation made a suggestion as to what might work?

- Keep an open mind. Explore the options. And, above all, be respectful. Often times, when people feel their human rights have been violated, emotions run high because their sense of dignity has been hurt.
- We suggest involving outside, expert advice to help find solutions that work for everyone.
- This might be a doctor, or other healthcare professional, a contractor that specializes in accommodating people with disabilities, or even a local advocacy group or religious organization that has insight into the issue.
- An appropriate accommodation will respect the dignity of the person needing the accommodation – it will allow them to fully participate and be part of the community.
- Take the example of Muslim women seeking female-only swim times.
- If we don't look for solutions to this issue that work for everyone, those women will not be able to enjoy the pool.
- Other residents could get upset if the matter isn't dealt with appropriately.
- And the building community could become poisoned for women seeking that particular accommodation.
- Of course, the responsibility doesn't just lie with you. There is the board – and other owners.

- Balancing those responsibilities can be tricky, but it is worth the little bit of extra time to find the right solutions. .
- Human rights accommodation and change requires buy-in at all levels. Especially at the leadership level.
- People have real concerns about their investment. Boards have bylaws and rules in place and are also protecting their investment.
- If you think about it, the cost of dealing with a complaint through the courts or before the Human Rights Tribunal can be high and are a real hassle.
- Not to mention the fact that human rights concerns can really eat away at the community and create unnecessary tension and conflict.
- Think about the woman who's family moved because the environment in her building became toxic, all because she wanted to go for a swim with her baby.
- I'm sure as you sit here each of you can think of a few examples where issues have come up that have caused conflict. Human rights or otherwise.
- Every community has their own set of issues and challenges.
- Someone recently told me human rights concerns are one of the fastest growing costs associated with corporate condo insurance expenditures.
- But they are preventable and we can find solutions, whether it's the first or second-best alternative for making the accommodation.

In many cases, the cost of human rights complaints to condo owners is higher than making accommodations in the first place.

- It's always better to remove barriers before they become an issue.
- Barriers could be physical, like stairs or door handles.
- They can also be a result of rules or policies that unfairly bar access to the services or facilities.
- For example, having set hours for family swim or not allowing scooters in underground parking garages.
- In new condo developments, inclusive design should be considered.
- And bylaws should be created with a human rights lens from the start.
- AODA standards require this.
- I know many of you are looking at your facilities, policies and bylaws with that AODA lens. Why not apply a human rights lens that moves beyond disability at the same time?
- Do a human rights audit and change practices that raise human rights concerns.
- When issues come up, management must be open and flexible to making changes to rules and bylaws – and making individual accommodations for individual circumstances.

That's where you come in...

- You receive concerns and complaints and you know first-hand what's going on in your buildings.
- You have established relationships with the board and the owners.
- It is you that knows the climate of your building.
- This puts you in the perfect position to help us make human rights a lived reality.
- And it charges you with the challenging task of facilitating the accommodation process and opening lines of communications between the people that live in your buildings and the board and corporation.
- I know that's not an easy task – that there are lots of other important issues that you deal with on a daily basis.
- We are here to help.
- Our website has many resources that you can use. We have an e-learning module on Human Rights 101 and policies and guidelines on a range of topics including human rights in housing and at work.
- We also have policies, guides and brochures on racial discrimination, sexual harassment, disability, and the duty to accommodate, among others.

- These set out practical examples and guides on how you can deal with concerns as employers, service and housing providers.
- You can look at our website – and even print out materials for your residents and boards.
- We have some of these available here today.
- Recently, we launched a policy on competing rights, which helps people to find solutions that respect everyone's rights.
- The policy recommends alternative mediation as a way to avoid litigation and provides a framework for analyzing and reconciling issues.
- It also helps identify whether human rights and competing rights are, in fact, at play.
- Generally applied, the principles of the framework could be helpful in condominium setting Like:
 - Showing dignity and respect for one another
 - Recognizing everyone's interests, rights and obligations
 - Addressing stigma and power imbalances and helping to give marginalized people and groups a voice
 - Encouraging cooperation and shared responsibility for finding solutions that work

Closing Remarks...

- Condo communities are a microcosm of the diversity in which we live.

- We're talking about people from different backgrounds and perspectives sharing space – all concerned with their investment.
- And, of course, we have the governing board wanting to protect their investment, bylaws and other rules and policies.
- We've come a long way in terms of human rights.
- We have people coming to Toronto and the surrounding area from all over the world.
- They're buying property and condominiums, and running businesses.
- We also have an aging population that will increasingly require accommodation where they live.
- Our new challenge is to look at how we do things and make sure that barriers are removed and that everyone is able to enjoy the same benefits.
- Whether it's in employment, housing or services.
- I've given you a lot to think about today.
- Now, I'd like to hear your stories and questions...