

CONDO COMMENTARY

"Post No Bills" – Addressing Offensive Messages within Condominiums

By David Thiel, B.A., LL.B.

A recent decision of the Human Rights Tribunal of Ontario, *Welkiyi v. Rouge Valley Co-operative Homes Inc. 2016*, confirms and explains the obligations of a 'housing provider' when discriminatory and harassing behaviour occurs within a multi-unit residential community. While the Rouge Valley decision involved a housing co-operative, it will become plain from the discussion below that the decision could apply to condominiums as well. Condominium managers, directors and owners ought to be familiar with the decision's implications.

In the Rouge Valley case, a series of offensive and discriminatory messages were posted at the co-operative building over a series of months. The messages referred in a derogatory manner, for example, to certain suite numbers and alleged physical disabilities, all of which was extremely offensive.

The applicants in the Rouge Valley case comprised 10 of the individuals to whom the offensive postings were directed. They applied to the Human Rights Tribunal, claiming damages and other relief against the co-operative and several of its directors, for failure to take adequate steps to address the postings.

The bottom line in the Rouge Valley decision was that the co-operative was found not to have taken adequate steps in response to the postings. As a result, the co-operative was ordered to pay \$30,000 in damages (\$3,000 to each of the 10 applicants). The co-operative was also ordered to post a copy of the decision and to provide to its residents a notice summarizing certain aspects of the decision.

The person who posted or authored the postings was not identified. Clearly, the *Ontario Human Rights Code* would have applied to the perpetrator assuming that such person was a resident of the building. For example, section 2(2) of the code provides that "Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building" (emphasis added) because of the stated discriminatory grounds in the code.

What is not immediately clear is the role and responsibility of the 'housing provider,' in this case the co-operative. The co-operative itself did not make the postings. However, the parties in this case acknowledged that the tribunal's past decisions concerning the right to be free from discrimination and harassment in the occupancy of accommodation imposed an obligation on 'housing providers' to address complaints of code violations. While condominiums were not specifically mentioned in the decision as 'housing providers,' the reasoning of the decision should apply in a condominium setting as well.

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The tribunal was critical of the co-operative's response to the postings, including that: (a) there was inadequate communication with the applicants, and (b) there was inadequate notice to the residents in general denouncing the behaviour. In this case, the co-operative had communicated to owners but the tribunal considered that the notices did not initially identify the nature of the harassment.

So, how should a condominium deal with such situations to create an environment free from discrimination and harassment, comply with its obligations under the code and minimize its liability? Each situation will be different of course and condominiums should seek legal advice at an early stage in any event.

The Rouge Valley decision is lengthy (some 87 pages) and it is difficult to summarize in brief, but based upon the principles in the decision, a condominium should consider the following three general areas for action:

1. Awareness

Be generally aware of human rights obligations, especially those relating to discrimination and harassment. Training for representatives is helpful, as would be a discrimination/harassment policy. The tribunal in this decision did, however, emphasize that these are not necessarily requirements, and that the actions of the housing provider after receiving a complaint are more important than these background considerations.

Again, this is not necessarily a requirement, but consider either expanding upon existing workplace violence and harassment policies to include more specific provisions relating to *Human Rights Code* issues or creating a standalone policy.

2. Post-complaint

Take complaints seriously, handling them sensitively and *promptly*. Investigate the complaint, plan action and maintain communication with the complainants.

3. Resolution

The condominium needs to provide a reasonable solution in all of the circumstances. Communicate findings and actions to the complainant. In the case of discriminatory public postings, it is likely necessary to give clear notice to residents describing the offensive conduct and denouncing same, especially in the case of persistent postings.

It is also important to take some steps in such a situation to identify the perpetrator. Consider additional security measures (e.g. installing security cameras if appropriate or thought effective) or other measures that would reduce the likelihood of the conduct continuing. The decision suggests that it would be desirable to seek input from police where applicable as to steps to combat such harassment.

Overall, the main point for condominium boards and managers to take from the Rouge Valley decision is to be vigilant for instances of discriminatory conduct and harassment, and that the condominium itself could be held responsible in such situations if it does nothing or does not act promptly.

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