

PUBLICATION

Will changes to human rights legislation bring challenges to age restrictions in condominium corporations?

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Whether it's University dorms or assisted living facilities, people of similar age cohorts tend to cluster together. In some cases there are even rules encouraging this. Several Condominium Corporations have provisions in their bylaws placing restrictions on the basis of age. For instance, there are several "40 Plus" communities and many more which disallow persons under the age of 18 or 21. Several of these bylaws permit short-term exceptions to age restriction rules under compassionate grounds. For example, if the parents of a child are killed in a car accident, the child is often allowed to live with Grandma and Grandpa for a few months to allow other accommodations to be made.

The rights of Condominium Corporations to have age restrictions have gone largely unchallenged to-date but this may soon change. Alberta's human rights legislation will soon be changed so that "age" will join race, gender, marital status, religious belief, sexual orientation, etc., as a category against which discrimination is specifically prohibited. Although the government is currently working with select groups to determine if there will be exceptions to this rule, it remains to be seen whether Condominium Corporations or Homeowners Associations will be exempt.

This raises the question: Does human right legislation apply to Condominium Corporations at all? The answer depends upon who you ask.

The Human Rights Tribunals seem to have taken the view that they have the authority to hear complaints against Condominium Corporations. The courts, however, are divided on this issue. In the case, *Condominium Corporation Plan No. 9910225 v Davis*, 2013 ABQB 49, the Court ruled that as the bylaws of a Condominium Corporation are essentially a private contract, Human Rights Legislation does not apply. Conversely, in the case *Condominium Corporation No 0520580 v Alberta (Human Rights Commission)*, 2016 ABQB the Court ruled that an Alberta Human Rights Commission could hear a complaint from a unit owner against a Condominium Corporation.

What all this means is that the law is unsettled in the area and a case may arise which challenges the bylaws which discriminate on the basis of age. There are good arguments to do so. As a hypothetical example, if a complaint was brought to a Human Rights Commission challenging an atrocious bylaw that prohibited "dark

skinned persons” or “homosexuals” from renting or owning units, the courts would have a hard time ruling that the human rights act doesn’t apply. So if Condominium Corporations can’t discriminate based on race or sexual orientation, what makes them able to discriminate based on age now that age is going to be granted the same status under the Act?

In my humble opinion how a decision is made will depend on the facts. If you have a group of rowdy 20-somethings disturbing an otherwise peaceful “40 plus” community, the courts would be more likely to uphold the age restriction. Conversely, if you take my above example of a child who lost their parents coming to live with their Grandparents and a callous Condominium Board trying to force them out, a court (or Tribunal) would be hard pressed to rule that Human Rights Legislation doesn’t apply to the bylaw in question.

So what should you do, as a Board member, if you find yourself in this situation? First and foremost, act politely and diplomatically. Know your bylaws. Consult a lawyer when needed. If there is a genuine effort to act reasonably and courtesy is shown, the more likely these issues can be resolved without recourse to courts or tribunals, which is a better outcome for everyone.

For further information or to answer any questions you have regarding this topic, please contact any lawyer in our Condominium Law group.