

## Accommodating a Disabled Condominium Unit Owner

The Ontario Human Rights Code provides protections and rights to persons with disabilities. Where a condominium resident provides sufficient evidence that he or she suffers from a disability attracting the protection of the Human Rights Code, then a condominium corporation has a duty to put in place any reasonable accommodation, short of undue hardship.

As human rights laws are considered to be quasi-constitutional, they rank high in the hierarchy of laws. Accordingly, the Human Rights Code trumps the condominium documents, which may result in certain provisions in the condominium documentation not being enforced against a disabled resident.

What constitutes reasonable accommodation will vary from case to case, depending on the resident's disability, what accommodation might be made and the particular circumstances at issue.

In a recent decision of the Ontario Human Rights Tribunal, [\*Box v. Middlesex Condominium Corporation No. 474\*](#), the Tribunal issued an order which incorporated the provisions of minutes of settlement agreed to by a condominium corporation and the unit owner. In this case, the unit owner had a medical condition which was treated by the use of a hot tub, which the unit owner had installed on her exclusive-use common elements in contravention of the condominium documents. The order provided that the hot tub could remain on the exclusive-use common elements, as long as the owner owned the unit. There were, however, a number of conditions imposed on the unit owner in consideration of her being permitted to keep the hot tub:

- proof of insurance in an amount of \$2,000,000 to be provided to the condominium corporation on a yearly basis;
- the owner agreed to indemnify the corporation for any bodily or personal injury or damage to property caused by the hot tub;
- the owner to be responsible for any increase in the condominium's insurance as a result of the hot tub being on the property (to a yearly maximum of \$100);
- no one, other than the owner, is entitled to use the hot tub;
- the owner was required to lock the hot tub whenever the owner is away from her unit for an extended period of seven days or more and the corporation has a right to inspect to ensure that the hot tub is locked;
- any damage to the common elements caused by the hot tub will be repaired by the owner;
- if the owner is not in residence in the unit for more than 200 days per year, then the hot tub must be removed from the exclusive-use common elements area and stored elsewhere, either in the garage or off the property; and
- if and when the owner intends to sell the unit, the hot tub must be removed from the exclusive-use common elements before the property is listed on the market and before any showings are permitted, and the hot tub cannot be sold with the unit.

This case provides a good example of how the condominium corporation was able to accommodate one particular disabled resident's disability (even though the accommodation was not in compliance with the condominium documents), while also protecting the condominium corporation from liability relating to this accommodation. It also illustrates that this accommodation would not authorize any future non-compliance with the condominium documents, as the accommodation applied specifically to the disabled resident only for as long as the disabled resident continued to reside in the condominium.