

Condominium Owners' Meeting on Muslim Holiday – Was this Discrimination?

A condominium corporation found itself before the Ontario Human Rights Tribunal ([Kamal v. PCC No. 51](#)) after several unit owners alleged that the corporation had discriminated against them on the basis of creed, by holding an owners' special meeting on an important Muslim religious holiday.

Major repairs to the tune of \$2,000,000 were required to repair the corporation's common element balconies and exterior walls. Unfortunately, there was only \$200,000 in the corporation's reserve fund. The need for the repairs was urgent as the corporation's insurer had threatened to stop insuring the corporation.

The Board did not want to levy a special assessment to raise the necessary funds for the repairs, as this would cause significant financial hardship for the owners and in some cases, cause unit owners to lose their homes.

Instead, the Board proposed borrowing the necessary funds, as that would allow the corporation to repay the loan over an extended period of time. This would result in a modest increase in monthly common expenses for the owners, instead of the large financial hit ensuing from a special assessment. The Board was able to negotiate favourable lending terms with a major bank, provided that the loan was finalized by year-end. Before the loan could be finalized the corporation needed to enact a borrowing by-law, which would not be effective until approved at a meeting by the owners of a majority of the units in the corporation, as required by section 56(3) of the [Condominium Act, 1998](#) (the "Act")

The corporation claimed that it required a minimum of four weeks to prepare the meeting notice and information packages, have them reviewed by legal counsel, printed and mailed out to owners at least 15 days prior to the meeting, as required by the Act. Keeping this in mind, together with the bank's year-end deadline, on September 9 the Board set the special owners' meeting for October 16, after ruling out the 14th because it was Thanksgiving and the 15th because it was Eid-ul-Azha.

Three unit owners, all of whom were opposed to the loan, complained that Eid-ul-Azha was on October 16. Evidence was presented that while some Muslims celebrate Eid-ul-Azha based on calendar dates determined in advance, others celebrate Eid-ul-Azha 10 days after the crescent moon has been sighted, which occurred on October 6. The notice of meeting and information packages had been sent to owners on September 26, well before the moon sighting.

The owners alleged that holding the meeting on September 16 was:

- a deliberate and direct act of discrimination against Muslims; and
- had a disadvantageous effect on them because of their creed as it interfered with their ability to adhere to their religious beliefs, which constituted indirect or adverse effect discrimination.

The corporation took the position that the owners could have attended the meeting without any interference with their ability to observe their faith, and alternatively had the option to participate in the meeting by proxy.

The Tribunal found that there was no discrimination and the unit owners' applications were dismissed in full on the following basis:

1. The unit owners did not provide any evidence to support their claim that the meeting was scheduled for Eid-ul-Azha deliberately to target Muslims and to prevent them from attending the meeting. The Board had in fact made efforts not to schedule the meeting on Eid-ul-Azha and the fact that Eid-ul-Azha fell on the 16th for some Muslims was unforeseen.
2. There was no need for the Tribunal to determine if the holding of the meeting on Eid-ul-Azha had a discriminatory effect on the unit owners by preventing them from adhering to their religiously beliefs, as the corporation had accommodated the unit owners' creed-based needs by permitting owners to participate in the meeting by proxy.

The Tribunal noted that it appeared that the complainant unit owners were not really interested in any accommodation, but were trying to halt the decision-making process and by-law approval at the meeting because they were opposed to the loan. The borrowing by-law had been approved by a strong majority, with the owners of 115 out of 169 units voting in favour of it.