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## The Case of the Uncertified "Service" Dog

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A recent decision of the Human Rights Tribunal,<sup>1</sup> (the "Tribunal") provides advice to strata corporations when considering the application of the *Guide Dog and Service Dog Act*. The case also considers when it is permissible to name individual members of the strata council when making a complaint to the Tribunal.

Ms. H., a strata lot owner, filed a complaint with the Tribunal alleging that the strata corporation and the president of the strata council discriminated against her son, CH, on the basis of a disability. The strata council refused to permit the son to keep a dog that violated the strata corporation's bylaws.

The strata corporation's bylaws permitted one dog or cat per strata lot provided that the dog or cat was no taller than 14" at the shoulder

Ms. H had an elderly Pomeranian/Chihuahua cross. Shortly after CH moved into the strata lot with Ms. H., CH acquired a pit bull. The dog violated the pet bylaw because it was a second dog in the strata lot and because it exceeded the height restrictions.

After receiving a complaint about the dog, the strata council president telephoned Ms. H. who stated she would deal with the second dog that week. Subsequently, Ms. H. sent a letter to the strata council stating that the dog, "Coco" had become a member of the family and that losing the dog would send CH on a downward spiral.

At the hearing, Ms. H advised that CH was a recovering heroin addict and that CH's family doctor had suggested the use of a pet as a treatment option, however, it was

not clear whether this information was provided to the strata council at the time that Ms. H requested an exception for Coco.

The strata council denied Ms. H.'s request. The strata council president wrote to Ms. H. to advise her of the strata council's decision. The strata council gave Ms. H. time to remove the dog. Ms. H. then wrote to the strata council advising that Coco was a certified service dog and would remain living in the strata lot. Ms. H. also provided a letter from CH's doctor which stated that CH had a chronic medical condition and required a service dog to help maintain his health. Ms. H. provided a certificate which she had obtained online from an American organization called Service Dogs America. To obtain a certificate, the applicant ticks various boxes to verify that the dog meets most requirements set out on a list. A payment is then made. The applicant can obtain a certificate and various other items, including a "Service Dog" vest.

The strata council, after considering the information provided by Ms. H., found that the certification did not meet the BC Ministry of Justice requirements. The strata council advised Ms. H. that the bylaws must be upheld.

Ms. H. refused to remove the dog, and complained to the Tribunal. Ms. H. claimed that the recent amendment to section 123 of the *Strata Property Act* (the "SPA") specifically provided that a bylaw that prohibits or restricts pets does not apply to a guide dog or service dog. Therefore by requiring that Coco be removed, the strata council was in breach of the SPA and was discriminating against CH. The strata council

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<sup>1</sup> BH obo CH v. Creekside Estate Strata KAS 1707 and another 2016 BCHRT 100

president and the strata council applied to have the complaint dismissed.

With respect to the complaint against the strata council president, Ms. H. claimed that the complaint should not be dismissed because the strata council president “allowed his emotions and personal feelings toward [CH] and the dog to get in the way of making sound decisions on behalf of the strata corporation” and refused to contact the CHOA advisor.

The Tribunal dismissed the complaint against the strata council president. The Tribunal noted that the alleged wrongdoing on the part of the strata council president was that he allowed his emotions to get in the way of sound decisions. The Tribunal found that this amounted to Ms. H. disagreeing with the decision. The Tribunal also found that the fact that the strata council president refused to contact the CHOA advisor was not a basis for personal liability. Ms. H. could have asked the CHOA advisor to call the strata council president.

As a general comment the Tribunal stated that “it is counterproductive to good governance of strata corporations to expose those who undertake what is often a thankless job to potential personal liability in the absence of specific allegations of acts that fall outside the scope of the office holder’s duties”.

To determine whether Ms. H.’s claim against the strata corporation should be dismissed, the Tribunal considered whether the allegation of discrimination had a reasonable prospect of succeeding at a full hearing.

The first issue that the Tribunal considered was whether Coco was a service dog and thus, would be exempted from the strata corporation’s pet restriction bylaws.

The Tribunal considered section 123(1.01) and (1.02), the recent amendments to SPA that provided that pet bylaws did not apply to guide dogs or service dogs and that guide and service dogs have the same meaning as in the *Guide Dog and Service Dog Act*. The Tribunal noted that the meaning of “service dog” is a dog that

- (a) is trained to perform specific tasks to assist a person with a disability, and
- (b) is certified as a service dog.

The Tribunal was unwilling to accept the certification obtained from the American online organization and

noted that there was no evidence that Coco had received any training or acceptable certification. The Tribunal concluded that it was extremely unlikely that, if the matter went to a hearing, the Tribunal would conclude that Coco was a service dog.

This conclusion did not, however, result in an immediate dismissal of the complaint. The Tribunal went on to consider whether the strata corporation was required to accommodate CH due to a disability as required by the *Human Rights Code*. Although the Tribunal found that a drug addiction is a disability, the Tribunal also found that there was no reasonable likelihood at a hearing that Ms. H. could establish that, in order to accommodate CH’s illness, CH required a dog that exceeds the height restriction or even that a second dog was required.

The case is important for strata corporations because it clarifies that a person with a disability may be entitled to keep a pet even though the pet is not a certified guide or service dog. As a result of the amendment to the SPA, many strata councils are of the view that exemptions only need to be made for guide or service dogs that are certified. However, notwithstanding the amendment, strata councils must continue to take into account the provisions of the *Human Rights Code* and consider whether an uncertified pet may be required as a result of the person’s disability. Using the example of a person with an addiction, the Tribunal stated that the test that the person must meet to show the need for accommodation is “that not having a pet could put the individual at significant risk of a relapse”.

When faced with requests that an exception be made for a pet in order to accommodate a disability, strata councils must consider both the specific provisions of section 123 of SPA and the obligation to accommodate a disability required by the *Human Rights Code*. Determining whether an individual suffers from a disability that requires accommodation, and more specifically, what accommodation is required can be complicated. When faced with such requests, strata councils should consider obtaining legal advice.