

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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Several owners have brought human rights complaints against their Strata Corporations and have been successful. This article will focus on three cases involving owners that have successfully brought human rights complaints against their Strata Corporations.

The three cases we will discuss in this article are:

1. *Ganser v. Rosewood Estate Condominium Corp.* (No. 1) (2002), 42 C.H.R.R. D/264 (an Alberta case we will refer to as *Ganser*)
2. *Williams v. Strata Plan LMS 768* (2003), B.C.H.R.T. 17 (a British Columbia case we will refer to as *Williams*); and
3. *Konieczna v. Strata Plan NW 2489*, [2003] B.C.H.R.T.D. No. 37 (a British Columbia case we will refer to as *Konieczna*).

Ganser involved Elizabeth Ganser, an 87 year old woman, who had her parking stall taken away from her. Elizabeth Ganser had disabilities, including virtual blindness and a limited ability to stand or walk. When she had first purchased her condominium unit she was assigned an indoor parking stall which gave her easy access to a security door which lead to the elevator to the units. She did not own her own car but her stall had been regularly used by her granddaughter and other caretakers when they visited her. The Strata Corporation amended its bylaws and certain conditions for eligibility for an assignment of an indoor parking stall were introduced. To be eligible for an indoor parking stall a resident owner had to hold a valid driver's license, own a vehicle, have insurance and drive their vehicle regularly. The Alberta Human Rights Panel found that they had jurisdiction to hear this matter because any member of the general public could potentially be a resident owner. The Panel found that the bylaw dealing with the assignment of parking stalls was discriminatory against Elizabeth Ganser on the basis of her disability. She was awarded \$5,000 in damages.

In *Williams*, the Strata Council changed how the security system of the building was being used. From 8:00 p.m. to 8:00 a.m. owners were required to go to the front door to allow visitors into the building rather than "buzzing" them in from their unit. Once again, this complainant had serious medical problems. She was concerned that if she ever needed emergency medical attention at night, she would not be able to let the paramedics into the building. The British Columbia Human Rights Tribunal found that the Human Rights Code applied. The Tribunal considered whether accommodating Dorothy Williams would create an unacceptable security risk to other owners in the building and found that it would not. The Tribunal ordered the Strata Corporation to disconnect the timer and return the operation of the intercom and entry system to 24 hour a day use. Dorothy Williams was paid \$1,500.00 to compensate her for injury to her dignity, feelings and self respect.

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Finally, the case of *Konieczna* considered the effect of a bylaw that prevented the installation of flooring, other than wall-to-wall carpeting, on Halina Konieczna, who had several allergies to latex, mould and dust in carpeting that aggravated her allergies and asthma. When she purchased her unit, hardwood floors were permitted, if written permission of the

Strata Council was received. The bylaw provided that written permission of the Strata Council was not to be unreasonably withheld. She applied and was granted permission to install hardwood floors, provided that she would sign and return an Indemnification Agreement. The Strata Corporation later changed the bylaw to provide that only wall-to-wall carpeting was allowed. Halina wrote to the Strata Corporation and advised that she had not carried out the installation of the hardwood floors before the bylaw was passed because repairs were being made to the external walls of her unit at that time. The owners refused to grant her an exemption to the hardwood floors bylaw. The Tribunal found that the Strata Corporation had exhibited a high degree of inflexibility and had failed to address Halina's concerns. The Tribunal ordered that Halina Konieczna was allowed to install hardwood flooring at her expense. The Strata Corporation was ordered to pay her \$3,500.00 as compensation for the injury to her dignity, feelings and self-respect.

When a Strata Council applies a bylaw to a specific individual, it is important for the Council Members to not only consider the provisions of the bylaw, but also how the bylaw will affect the individual involved. It is also important for Strata Council members to consider how the management of the common property is affecting those with disabilities in the complex.



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