

Headline: **The Case of the Preferred Pathway—A Decision of the Human Rights Tribunal**

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Written by: Adrienne Murray

It is well established that a strata corporation is subject to Section 8 of the Human Rights Code which provides:

8 (1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

Decisions of the Human Rights Tribunal have confirmed that a strata corporation falls within Section 8 of the Human Rights Code because it provides a service customarily available to the public.

As provided in Section 8 of the Human Rights Code, a strata corporation may not discriminate against a person on the basis of any of the enumerated characteristics contained within Section 8.

A decision of a strata corporation or a strata council may be found to be discriminatory even though the decision is one that is addressed by the bylaws and the strata council is only enforcing the bylaw.

The application of Section 8 was most clearly explained in the case of *Konieczna v. The Owners, Strata Plan NW 2489*. In *Konieczna*, the strata corporation's bylaws required wall-to-wall carpeting on all floors other than the entrance foyer. Ms. Konieczna suffered from numerous allergies and requested permission to install a hardwood floor. The strata council refused, on the basis of the bylaw, and put forward a resolution to the owners to amend the bylaws, or provide an exemption for Mrs. Konieczna. The owners refused. Ultimately, the Human Rights Tribunal ordered the strata corporation to permit Ms. Konieczna to install hardwood flooring.

The Human Rights Tribunal concluded that, although the bylaw applied to all owners, it affected an owner with a disability differently. Thus, Ms. Konieczna, the owner with the disability, was discriminated against. The Human Rights Tribunal also held that where discrimination occurs, the strata corporation has an obligation to accommodate the owner with the disability.

The need for accommodation has left many strata corporations uncertain as to when and what steps it must take to respond to requests from persons with disabilities. Strata corporations are assisted by the recent decision of *Ross v. Strata Plan NW 608*.

Mr. Ross complained to the Human Rights Tribunal that the strata corporation refused to accommodate him by installing a gate and pathway to his patio.

Mr. Ross had undergone a number of medical procedures that caused him to be unsteady on his feet. At times Mr. Ross walked with a cane, and at other times he used a motorized scooter.

Mr. Ross owned a ground-floor strata lot and accessed his suite through the ground floor lobby. Mr. Ross requested approval for the installation of a gate in the fence surrounding his patio and a pathway over the common area to the public sidewalk. Mr. Ross stated that the gate and pathway would allow him easier access to his suite and he could then store his scooter on the patio. However, the evidence indicated that Mr. Ross could store his scooter in his own suite or on the patio. The Strata Council refused Mr. Ross' request.

The Human Rights Tribunal concluded that the installation of the gate and pathway over the common property would be more convenient for Mr. Ross when he entered and exited his strata lot. However, the Human Rights Tribunal also found that the gate and pathway were not necessary to accommodate Mr. Ross's disability. The Human Rights Tribunal dismissed Mr. Ross's complaint.

The *Ross* decision distinguishes between actions that are necessary to accommodate a person with a disability and actions that are simply desirable or preferred by the person with the disability.

Although there is no doubt that a strata corporation must accommodate an individual with a physical disability, not every request may need to be satisfied. In the case of *Basic v. Strata Plan BCS 1461*, when considering a complaint of discrimination on the basis of a physical disability, the Human Rights Tribunal stated that the onus is on the complainant to prove that he has the physical disability and that the disability results in the limitation that requires the accommodation that is requested.

When faced with a request for a relaxation of a bylaw, permission to alter common property, or other such requests for the purpose of accommodating a disability, the strata council should consider whether the action being requested is necessary to accommodate the physical disability, or whether it is being requested as a matter of preference or convenience. The strata council must identify and consider all of the relevant factors and may wish to obtain legal advice to ensure that proper consideration has been given to the strata corporation's obligation to accommodate the individual.