## Case In Point

# $30,000 in Damages Awarded against Volunteer Board of Directors for Discriminatory Posters in Housing Co-operative

**Date:** March 31, 2016

The Human Rights Tribunal of Ontario (Tribunal) recently awarded $30,000.00 in damages against the volunteer members of the Board of Directors of Rouge Valley Co-operative Homes Inc. The Tribunal found that the Board failed to adequately address resident complaints about harassing and discriminatory messages posted throughout the co-operative (Co-op), contrary to section 2 of the Ontario *Human Rights Code* (Code).In Welykyi v. Rouge Valley Co-operative Homes Inc., ten residents (Applicants) were targeted by an unknown perpetrator who posted 18 vulgar and offensive messages about them throughout the Co-op. The messages contained comments relating to the prohibited grounds of disability, race, sex, gender identity, ancestry, age and receipt of public assistance and were described as being “truly heinous” and displaying a “shocking level of ignorance and intolerance.”The Applicants, many of whom were prior Board members themselves, reported the matter to the new volunteer Board of Directors. The Board made efforts to remedy the situation, which included issuing three notices to all members, relocating security cameras, installing additional cameras that did not record footage, consulting with members of the police, holding a board meeting and/or mediation and eventually installing a new camera in the mailroom. Ultimately these efforts were unsuccessful. The Applicants then alleged that the Board had failed to ensure that they were free from harassment and discrimination with respect to their housing as required under the Code.The question before the Tribunal was whether or not the efforts of the volunteer Board of Directors to ensure the Applicants were free from harassment and discrimination were adequate.

The Tribunal first considered the Board members’ awareness of the human rights issues. It noted that at the relevant time the Board did not have an anti-discrimination/anti-harassment policy or mechanism in place to deal with the issues, even though as a result of the incidents the Board adopted a Human Rights By-law and the Board members underwent human rights training. The Tribunal also found that “…the Board had no appreciation of the human rights dimension of the harassment” until the Centre for Equality Rights in Accommodation (CERA) became involved and wrote to the Board members reminding them of their obligations under the Code.

The Tribunal then focused on the actions taken by the Board “post-complaint” and noted “significant deficiencies” in the response to the harassing messages, including:

- The complete absence of communication with the Applicants. The Tribunal stated that when a housing provider receives a complaint, it should acknowledge the complaint and assure the complainants involved that it will be addressed. The Board’s efforts at holding a meeting and offering mediation were found to be deficient. First, given the context of the ongoing conflict between the old and new Board members, the Tribunal found that it was not clear that the meeting was intended to resolve the harassing messages. Only the previous Board members were invited rather than all of the victims of the harassment. As well, the meeting invitation stated that the goal of the meeting was to “develop a plan to serve our Co-op in the future” without any mention of the harassing messages. Second, the Tribunal noted that mediation is a dispute resolution process, and given that both parties agreed that the harassing messages had to stop, mediation was not required in these circumstances. Finally, in any event, the meeting broke down and the issue of the messages was never discussed.
- The failure of Board members to express denunciation of the harassing messages and concern for the victims or to give any indication to the victims that something would be done about the messages. The Tribunal held that the harassing messages created a poisoned atmosphere for the Applicants and it was the responsibility of the Board to “take back” the living space for the residents. This could have been done by publicly denouncing the harassment and keeping the residents advised of the situation.
- The failure of the Board to take prompt action to counteract the effect of the discriminatory messages. The Tribunal

found that even if the meeting was intended to address the messages, the meeting was held almost five months after the messages began to be posted. In addition, the third notice sent to Co-op members was the first, and only, notice to actually refer to and describe the harassment. It was not sent until four months after the harassing messages began. Finally, the delay by the Board in installing the camera in the mailroom (approximately five months after the messages started) supported the Tribunal's conclusion that the Board did not act proactively. While the Board had installed fake cameras earlier on, the effectiveness of installing those cameras was undermined by the fact that it became widely known among Co-op members that the cameras were not real.

Finally, with respect to the resolution of the complaint, the Tribunal found that the Board did not make any real efforts to investigate the harassment. Specifically, Board members did not attempt to speak to residents or anyone else who may have had knowledge of the incidents in question.

The Tribunal accepted the Applicants' submission that the Board members' failure to address the harassment adequately exacerbated the effect of the harassment. As a result, even though the Board members were not directly responsible for the messages, the Tribunal awarded $3,000 compensation to each member targeted by the harassment for the failure of the Board to adequately investigate and address their complaints. The Board was also ordered to post copies of the decision for a period of six months.

This case highlights the importance of housing providers being aware of their Code obligations to maintain accommodation free from discrimination and harassment as well as the potential severe consequences for failing to do so. It also provides guidance with respect to addressing claims of discrimination and harassment. Housing providers should ensure that they take all claims seriously, act proactively, and most importantly, communicate with the residents at all stages of the investigation. It would also be wise for housing providers to have a discrimination and harassment policy which provides a mechanism to address Code–related complaints.

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