

## Do you have a Policy and Complaint Mechanism for Addressing Unit Owner Allegations of Harassment and Discrimination?

The Human Rights Tribunal has recently reaffirmed the 3-part test for assessing whether or not an employer has met its obligation to take reasonable steps to respond to and address complaints of harassment or discrimination. The decision in *Zambito v. LIUNA Local 183*, 2015 HRTO 605 (CanLII) emphasizes in Step 1 of the test the need for employers to have a policy and complaint mechanism to address alleged violations of the Human Rights Code (the "Code"):

- (1) **Awareness of issues of discrimination/harassment, Policy, Complaint Mechanism and Training:** Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident? Was there a suitable anti-discrimination/harassment policy? Was there a proper complaint mechanism in place? Was adequate training given to management and employee?
- (2) **Post-Complaint: Seriousness, Promptness, Taking Care of its Employee** [unit owner or occupant], **Investigation and Action:** Once an internal complaint was made, did the employer [property manager or condominium corporation] treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act?
- (3) **Resolution of the Complaint (including providing the Complainant with a Healthy Work** [living] **Environment) and Communication:** Did the employer [property manager or condominium corporation] provide a reasonable resolution in the circumstances? If the complainant chose to return to work [stay in the unit], could the employer [property manager or condominium corporation] provide him/her with a healthy, discrimination-free work [living] environment? Did it communicate its findings and actions to the complainant?

Many professional property management companies will have such policies and processes for their employees since other provincial legislation, like the *Occupational Health and Safety Act* (the "OHSA"), mandates a written policy for addressing workplace harassment and bullying. What most property managers and condominium corporations don't have, however, are policies and processes for *unit owners and/or their occupants* to raise concerns about the alleged infringement of their Code rights.

While the test above arises from an employment context, the Code imposes the same obligations on condominium corporations (including property management companies who manage condominium properties) with respect to ensuring a housing environment that is free from harassment and discrimination.

When a condominium board or property management company is the subject of a complaint to the Human Rights Tribunal, the "Response to an Application" form that must be completed contains the following questions:

- (a) Do you have a policy related to the type of discrimination alleged in the Application?
- (b) Do you have a complaint process to deal with discrimination and harassment?
- (c) Did the applicant make a complaint under the internal complaint process about the facts in this Application?

(d) Describe how the organization responded and what was the outcome of the complaint process?

HRTO, Form 2-Page 8 of 13 (01/07/2010)

Usually, condominium corporations and property managers will have to answer “no” to the first two questions and “not applicable” to the last two. On this basis alone, the risk of liability of the property management company and/or condominium corporation to the complainant increases dramatically.

Property managers and condominium corporations are vulnerable to human rights complaints and there are legal obligations imposed on them under the Code to take reasonable steps to respond to and address complaints of harassment and/or discrimination. In view of the Tribunal's continued application of the 3-part test identified above in assessing an organization's response to complaints, it is prudent for a property management company to ensure that there are formal policies in place in their operations by which unit owners and occupants can raise concerns of Code violations. Condominium corporations who develop such policies and procedures would be well-advised to amend their rules and regulations to reference same to ensure all unit owners are aware of the policy and to give the condominium corporation more leverage against unit owners who may be in violation of the policy.

At a minimum, the policy should contain the following:

- Identify the policy objectives (i.e. commitment to providing an environment free of harassment and discrimination).
- Identify who the policy applies to
- Set out a complaint resolution process (i.e. the requirement for a written complaint to be delivered to an identified person); and
- Set out the investigation process

If a unit owner or occupant alleges discrimination or harassment, property management staff should be trained to recognize the types of complaints that trigger the application of the Code and the policy. Staff should know to provide a copy of the policy to the unit owner or occupant and request a written complaint containing details of his/her allegations. As can be seen from the criteria set out by the Tribunal, it is important that the entire process, from the receipt of the complaint to the outcome of same, be thorough and complete.

Not only will taking these steps ensure that onsite staff are equipped to address complaints in a prompt and efficient manner, it may also enable a condominium board and/or property manager to resolve complaints before they become the subject of applications to the Human Rights Tribunal or the Court. Where property managers are named in a complaint, the existence of the policy (and compliance with it) will reduce liability exposure.

If you have questions about your policies or would like assistance in preparing a policy that will apply to unit owner or occupant complaints of harassment or discrimination, please contact Kristin Ley at Cohen Highley LLP to discuss same. She can be reached by phone at: (519) 672-9333 x 316 or by e-mail at: [ley@cohenhighley.com](mailto:ley@cohenhighley.com)