

Condo must pay for resident's ramp

Advocates for disabled celebrate ruling, critics say it sets bad precedent

By Greg Mercer

In a ruling that could have costly implications for condominium boards across the province, Ontario's human rights tribunal has sided with a disabled man who wanted his neighbours to pay for a ramp up to his front door.

Advocates for the disabled are celebrating the decision as a groundbreaking case. But legal experts in the condominium industry say it's a stunning reversal of previous rulings, setting a costly precedence that will make volunteer condo boards wary of similar requests.

"Condo boards everywhere take note," warned Sharmaine Hall, a lawyer for Paul DiSalvo, the Halton-area man who won the case.

"Ensure that when you're responding to a request, you have reached a decision with the human rights requirements in mind."

DiSalvo has degenerative multiple sclerosis and is unable to walk up the front steps of his townhome. He uses his garage to get in and out of his unit. Hall argued successfully that the man's steps were a common area, and therefore building a ramp was the responsibility of the condo corporation. DiSalvo's condo board said the cost was his to bear.

On Wednesday, the human rights tribunal ruled that DiSalvo's condo board should pay to build the ramp and alter his curb at a cost of \$3,850, plus pay \$12,000 in damages because the board discriminated against him in the way they handled his complaint.

Advocates hailed the ruling as another victory in a long campaign to make neighbourhoods more friendly to people in wheelchairs or with other disabilities.

"This is very, very good news. For too long there have been barriers to access, and we believe it's time to change the perception," said Bil Smith, executive director of The Independent Living Centre of Waterloo Region. "We have people calling us all the time saying they can't access things people without disabilities can."

Others said the decision went too far, and unfairly makes condo members financially responsible for the specific needs of their neighbours.

"It's obviously only being used by that single person and their family. It just seems inappropriate for everyone else to pay for it," said Bob Gardiner, a condo lawyer and member of the Association of Condominium Managers of Ontario.

The standard until now has been that if one condo owner wanted changes to common condo property because of their specific needs, the condo board ought to be supportive and approve that construction - but it shouldn't have to pay for it, he said. They only paid for changes that served the whole condo community.

Robert Mullin, a veteran condo lawyer with Guelph firm SmithValeriotte, said the tribunal ruling seems to contradict a decision it made back in June on a similar case. "It seems to be an inconsistent ruling. I think we need to have clear direction from the courts as to what is the level of accommodation," said Mullin, who is also president of the Golden Horseshoe chapter of the Canadian Condominium Institute.

The ruling appears to have some very real financial implications for condo corporations. But it may also put another kind of scare into volunteer condo boards.

"They need to tread very, very carefully," Mullin said. "These are rarely cut-and-dried issues."