





Owners may be prohibited or restricted from affixing any type of decoration or installation on the common elements.

Multicultural Residencies: Unique Challenges and Opportunities

BY JOSEPH SALMON & BARBARA HOLMES

RESIDING in a condominium typically means joining a large community and living in close proximity to neighbours. In Canada's multicultural society, a condominium community will likely be ethnically, culturally, religiously and politically diverse. While this diversity is an opportunity to expand horizons and embrace the benefits of multiculturalism, it can also pose governance challenges for condominium corporations.

There are a myriad of issues that may arise and, as each condominium corporation has its own unique demographic blend of residents, there is no "one-size-fits-all" approach for dealing with these challenges. Each condominium corporation will face its own unique set of circumstances and will need to tailor its practices to the various situations that it may encounter. In this article, we canvass some of the issues that illustrate the array and complexity of situations that condominium corporations may face when dealing with a multicultural community.

While subsection 17(3) of the *Condominium Act, 1998* (the "Act") imposes an obligation on condominium corporations to take all reasonable steps to ensure compliance with the Act, condominium declaration, bylaws and rules, this obligation must be balanced with applicable human rights legislation. There are limited instances when discre-

tion is warranted and instead of strictly enforcing governing documents, legal advice should be obtained before acting.

Religious Beliefs vs. Declaration and Rules

An example of when religious beliefs can come into conflict with a condominium declaration and rules is the placement of a *mezuzah* on a unit's exterior doorframe. It is a common practice amongst members of the Jewish faith to affix a small ritual item on their doorposts known as a mezuzah, which contains certain biblical verses written on parchment. This ritual is regarded as a religious obligation and is required by Jewish Law. A potential problem can arise when a condominium corporation has a rule prohibiting items from being placed or affixed outside of units. While section 58 of the Act requires rules to be reasonable, a rule prohibiting items from being placed outside of units may be justified on the ground of stylistic consistency and integrity, maintaining property values, insurance requirements, or safety concerns. Furthermore, many condominium corporations take the position that both board approval and an agreement between the condominium and an owner under section 98 of the Act are required prior to erecting anything on



An example of when religious beliefs can come into conflict with a condominium declaration and rules is the placement of a mezuzah on a unit's exterior doorframe.

the common elements. Under this interpretation, the placement of a mezuzah without the approval of the board or an agreement would be in breach of section 98 of the Act.

This issue has previously received media coverage in the United States. The mezuzah controversy rose to prominence in Chicago in 2001, when the condominium association at the 378-unit Shoreline Towers adopted a rule banning “mats, boots, shoes, carts or objects of any sort... outside unit entrance doors”. The board determined that this rule must be enforced in an absolute manner, and accordingly, Shoreline Towers’ management removed the mezuzah.

Complaints by Shoreline Towers’ residents were filed with the Chicago Commission on Human Relations, the Illinois Attorney General, and the U.S. Department of Housing and Urban Development, alleging housing discrimination on the basis of religion. In 2006, a federal court judge determined that the condominium association’s rule did not violate the Federal Fair Housing Act, which was upheld on appeal in 2008. However, in 2009, the U.S. Court of Appeals for the 7th Circuit in Chicago reversed the 2008 decision, and the case proceeded. In 2011, after years of legal fees and aggravation for all parties, a confidential settlement was achieved.

As a result of the Shoreline Towers controversy, the Illinois Condominium Property Act was amended to provide

that a condominium board may not make a rule that prohibits any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front door area of a condominium unit.

Mezuzah legal battles, similar to the Shoreline Towers controversy, played out in other states as well. A Connecticut condominium association ordered an owner to immediately remove her unit’s mezuzah or face a daily fine of \$50. The condominium’s lawyer advised the media that the declaration prohibited unit owners from hanging or displaying items outside windows or walls without the prior consent of the association’s board. However, this rule was inconsistently applied. The association allowed crosses and Christmas wreaths to be displayed but required the unit owner to remove her mezuzah. After the unit owner retained legal counsel and media picked up the story, the matter was resolved with the unit owner being permitted to keep her mezuzah up and the association publicly apologizing. The association president claimed that it was a misunderstanding and that the condominium was not aware of the significance of the mezuzah.

In *Syndicat Northcrest v. Amselem*, the Supreme Court of Canada determined that sincere personal religious beliefs override the terms of a condominium declaration and the court allowed unit owners to erect a temporary Jewish ritual hut on their balconies

(known as a Sukkah) despite the provisions of the declaration prohibiting such actions. While this case and its ramifications stirred controversy in the legal community as to the extent to which a condominium corporation is required to accommodate religious beliefs, it is clear that condominium corporations must take religious beliefs and practices into account when dealing with enforcement matters.

Be Sensitive: Enforcement Factors to Consider

Like most legal situations, especially in the realm of human rights, context and facts are critical to the outcome. Although no two cases are the same, the aforementioned cases illustrate important factors to consider in the context of enforcement matters, including:

- the reason for the unit owner’s infraction;
- the underlying rationale for the rule or declaration provision;
- whether the rationale has been clearly communicated;
- whether the corporation has requested an explanation of the religious practice;
- the existence of reasonable alternatives instead of strict enforcement or ignoring a rule;
- whether alternatives have been communicated or requested; and
- whether the rule or declaration provision has been selectively enforced.

Enforcement issues have also arisen in relation to Christmas decorations. The outside of the entrance door to units, balconies and exterior windows, verandas and front lawns of townhouse units generally do not form part of the unit, but are part of the common elements of the condominium. Owners may be prohibited or restricted from affixing any type of decoration or installation on the common elements. Rules relating to holiday decorations may contain provisions:

- prohibiting affixing wreaths and other decorations on the outside of unit doors in highrise buildings;
- mandating Canadian Electrical Code approved and designated outdoor lighting;
- limiting when holiday decorations can be put up and the date by which they are to be taken down; and

- prohibiting the use of real Christmas trees due to fire hazard concerns and additional costs arising from cleaning the common elements.

A 2010 article in the *Toronto Sun* reported on a condominium unit owner who was asked to remove a Christmas wreath from the door to his unit, as this was a breach of the condominium corporation's rules. While the hanging of a wreath seemed harmless and the article seemed to sympathize with the owner, Fred Collins, Chief Instructor at the Ontario Fire College, wrote to the *Toronto Sun* explaining

the outside of the building and also inside the unit if visible from the outside. The *National Flag Act of Canada* encourages condominium corporations to allow the display of the Canadian flag in accordance with the flag protocol. However, this does not prevent a condominium corporation from banning the display of other flags on the condominium property.

Linguistic Diversity

Condominium boards should also address ethnic and linguistic diversity in their condominium. Where there

understand their diversity, whether through monthly meetings and presentations on upcoming days of significance and interest, creating a subcommittee to keep management and the board apprised of cultural happenings or creating a social committee whose mandate includes celebrating the diversity within the community. Provided these activities are conducted in a respectful and non-discriminatory fashion (open to any ethnicity, culture, religion, belief system, race, sex and viewpoint), many of the potential governance issues that may arise can be avoided and the condominium community will be enhanced. While Christmas and Easter are the only religious statutory holidays throughout Canada, condominium corporations can recognize other religious or cultural holidays celebrated by their residents.

Two-way communication between the condominium board/management and residents is crucial in a diverse condominium community. Respectful and proactive communication will assist the condominium board and management and enable the focus to be placed on the general operation of the condominium corporation rather than on avoidable governance issues. Furthermore, given the plethora of new and resale condominiums available to purchase, a harmonious and proactively inclusive condominium can stand out, potentially increasing the market value of those condominium units. ♦

Residents, board members and managers of condominium corporations should take the time to learn about their fellow residents and understand their diversity...

that in the event of a fire, one wreath could immediately fill the common element corridor with toxic gases capable of killing all persons attempting to escape from the corridor. Mr. Collins stated that, "the prohibition of such decorations on door and hall hangings has its roots in the Ontario Fire Code and is there to try to protect the lives of the residents of those buildings. Such a prohibition on decorations in the halls of apartment and condo buildings is not a vendetta against any resident." Condominium boards and managers should be aware of these safety concerns in the event that any residents try to pressure the condominium corporation to amend its rules to permit door decorations.

are a large number of residents that are not fluent in English it may be appropriate to have notices posted in other languages. For example, posting a notice of impending fire drills in another language may be useful where many residents are known to be fluent in a particular language other than English. On the other hand, in a building where there are numerous languages spoken, it could be potentially costly or difficult to post signage in several different languages. Each situation is unique, but in situations where the signage deals with potential life safety matters (such as a fire drill), the additional work and potential costs may be justified.

Patriotism vs. Declaration & Rules

Displaying national flags is another issue that can potentially cause controversy in a condominium. During international sporting events it is common practice for fans to display the flag of the country for whom they are cheering on their vehicles and homes. Many condominium rules prohibit the display of flags, both on

Recommendations

A board that is sensitive to the multicultural diversity of the condominium's residents will likely avoid many related legal and governance issues. Furthermore, sensitivity will help facilitate a culturally and socially vibrant living environment. Residents, board members and managers of condominium corporations should take the time to learn about their fellow residents and



Joseph Salmon is a litigator in Aird & Berlis LLP's Condominium Group. His practice encompasses all aspects of condominium dispute resolution, including construction deficiencies, compliance applications, shared facility governance, lien enforcement, mediations, arbitrations, defamation lawsuits and class action defence.



Barbara Holmes is a lawyer at Aird & Berlis LLP. She is a frequent contributor to *condoreporter.com*, which provides timely commentaries on the latest developments in condominium law in Ontario.