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Culture and Religion

Sabbath (Shabbat) Elevators in Condominiums

Why Might a Condominium Community be Resistant to Installing a Sabbath Elevator?



This article explores how a condominium community ought to respond to a resident's request that the condominium install a Sabbath elevator.

Is a condominium community obligated under the *Ontario Human Rights Code* to accommodate such a request?

What is a Sabbath Elevator?

It is an elevator that operates automatically and continuously during the Jewish Sabbath (from sundown Friday to sundown Saturday). It typically stops at each floor of the building without the need to press a call button or a destination button.

The purpose of a Sabbath elevator is to satisfy the religious observance of some Jewish people to abstain from operating electrical switches on the Sabbath.

Why Might a Condominium Community Be Resistant to Installing a Sabbath Elevator?

The two common arguments against installing a Sabbath elevator are cost/wastefulness (elevators consume a lot of electricity) and undue service delay.

The Amselem Case and the "Sincere Religious Belief" Test

In the 2004 case of *Syndicat Northcrest v. Amselem*, the Supreme Court of Canada considered the religious rights of an Orthodox Jewish community in a Montreal condominium. The plaintiffs in *Amselem* claimed that a condominium by-law prohibiting them from building a sukkah on their balconies infringed their freedom of religion.

In *Amselem*, the Supreme Court set out

a three-step test to determine whether the claimants' freedom of religion was infringed:

A Religious Belief:

The first part of the test is that the claimant must have a belief that is religious in nature, and that calls for a particular course of conduct. This is a relatively low threshold, as the belief may be customary to an organized religion, or it may be entirely subjective to the claimant's individual connection with the divine, having no conformity with any official religious dogma.

A Sincere Belief:

The second part of the test is that the claimant's belief must be sincere at the relevant time. In this regard, the Court recognized that a person's religious be-

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Arguably, in the case of a Sabbath elevator, if the claimant was able-bodied and lived on the second floor of a large building, the condominium might fairly conclude that the lack of a Sabbath elevator amounted to an insignificant infringement on the resident's religious rights.

iefs can change over time, and therefore, a person's past practices may not be determinative of the sincerity of the person's belief at a later date.

A Significant Infringement:

The third and final step of the test is that the infringement upon the claimant's sincerely held religious belief must be sufficiently serious, and not a mere trivial breach.

In the writers' view, an example of a trivial (or non-existent) infringement may be found in the case of *Freitag v. Penetanguishene*. In *Freitag*, the Ontario Human Rights Tribunal held that a Christmas tree display on public property did not affect the "non-Christian" claimant's ability to access municipal services, and therefore did not infringe the claimant's rights.

Arguably, in the case of a Sabbath elevator, if the claimant was able-bodied and lived on the second floor of a large building, the condominium might fairly conclude that the lack of a Sabbath elevator amounted to an insignificant infringement on the resident's religious rights.

The Ontario Human Rights Code and the "Undue Hardship" Test

Pursuant to sections 2 and 11 of the Ontario Human Rights Code, condominium corporations in Ontario have a legal obligation to accommodate residents' religious beliefs and practices to the point of "undue hardship".

In *DiSalvo v. Halton Condominium Corporation No. 186*, the Human Rights Tribunal of Ontario considered the

meaning of undue hardship when accommodating a condominium resident with disability-related needs.

The Tribunal provided that a condominium corporation can establish undue hardship by demonstrating that a particular accommodation would be extremely costly (having regard to potential outside sources of funding), or that it would interfere with the health and safety of other residents.

Cost:

The mere fact that an accommodation would result in a cost to the owners of the condominium (even if it necessitates a special assessment) is not, by itself, sufficient to establish undue hardship.

Furthermore, in the writers' view, the condominium corporation's ability to levy a special assessment on the unit owners is not an "outside" source of funding, as the unit owners are at all times the condominium's only source of funding.

When applied to the present case, it is unlikely that the cost to implement and operate a Sabbath elevator would be considered excessive, unless the installation required significant upgrades to the existing elevator system.

Health and Safety:

The second factor in undue hardship, health and safety, would almost certainly apply to a building that had only one elevator. In this regard, it could present an undue health and safety risk to other residents if they were unable to promptly call an elevator in an emergency situation.

A Step-By-Step Guide to a Request for a Sabbath Elevator

Upon receiving a written request from a resident of the building to install a Sabbath elevator, the condominium corporation will have a "procedural" duty to accommodate, meaning that it must promptly and appropriately inquire, consider, and respond to the accommodation request.

Condominium corporations should consider seeking legal advice at an early stage so as to ensure that they do not violate any of the procedural or substantive rights of the requesting resident. As a preliminary matter, we note that most condominium corporations with only one elevator can rely on health and safety factors for refusing a request to install a Sabbath elevator.

However, condominium corporations with more than one elevator in the building should consider the following steps:

1. *Confirm the existence of an infringement upon a sincerely held religious belief: The first step would be for the condominium to have the resident confirm in writing that:*
 - a. *the resident observes the Jewish Sabbath;*
 - b. *the resident has a sincere belief that using a regular elevator on the Sabbath is prohibited, and that using a Sabbath elevator is permitted;*
 - c. *the resident is significantly burdened by the lack of a Sabbath elevator in the building, together with a brief explanation of the nature of the burden; and,*
 - d. *if the condominium were to install and operate a Sabbath elevator, then this would fully satisfy the resident's need for religious accommodation.*

In the writers' view, it would be reasonable for the condominium to request that the foregoing criteria be confirmed by the resident in the form of a sworn statement.

2. *Assess whether the infringement is significant: The second step would be for the*

condominium to review and reasonably consider the adequacy of the resident's sworn statement. After this step, the condominium corporation would have a duty to accommodate the request, unless it can establish undue hardship.

3. Assess the accommodation options, and whether there are any barriers to installing the Sabbath elevator: The condominium corporation should obtain an opinion from a qualified professional that sets out:
 - a. potential options, cost, and technical feasibility for installing and operating a Sabbath elevator, having regard to the existing elevator systems in the building; and,
 - b. the anticipated consequences of installing a Sabbath elevator upon elevator service within the building.
4. The final analysis: A condominium corporation should seek legal advice before concluding that a request for accommodation may be refused on the basis

of undue hardship. Furthermore, the existence of undue hardship would not necessarily end the inquiry. Instead, it would trigger a secondary duty to consider with the requesting resident any alternatives that would not result in undue hardship.

Conclusion

The above-described process for considering a Sabbath elevator may be applied, with necessary modifications, to most requests for religious accommodation. In all cases, the property manager and the

board of directors must work with the resident to create an individualized plan which addresses the need. Crucially, the property manager and the board must respect the resident's dignity by co-operating and by taking active steps towards implementing a reasonable accommodation plan. Condominium corporations would be wise to notify legal counsel as soon as they are aware of a resident's request for accommodation, and at the very latest, as soon as the board is aware of a potential dispute between the condominium corporation and the resident. 

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