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Mental health illnesses are pervasive and directly or indirectly (or both) affect each and every Canadian. The Canadian Mental Health Association reports that 20% of Canadians will experience a mental illness in their lifetime.

A Little Can Go a Long Way

It is very important for condominium corporations to take steps to prevent and eliminate discrimination based on mental health illnesses and addictions from the way in which the condominium is managed. The duty to accommodate mental health illnesses is a matter of human rights that takes precedence over any provision of the Condominium Act, 1998, as well as the condominium's declaration, by-laws and rules.

The Duty to Accommodate

People often think of disabilities as constituting only physical impairments; however, mental illnesses also constitute disabilities under the Ontario Human Rights Code. Condominiums have a duty to accommodate mental illnesses and addictions under the Code to the point of undue hardship.

Condominium corporations therefore have the same legal obligation to accommodate such disabilities as they do in relation to physical impairments.

This obligation to accommodate is a positive one, meaning it is not enough to wait for an occupant to advise the corporation of what type of accommodation he or she may require. The corporation must take steps as soon as signs of mental illness are shown. The specific steps required may differ depending on the circumstances, including the type of disability evident and the extent to which the board understands it.

Best Practices

So, what steps can a condominium corporation take to ensure it complies with accommodation requirements and to prevent discrimination at the condominium? One of the most important things to remember is to be proactive rather than reactive in addressing accommodation issues. Below are six best practices for a condominium corporation to ensure it is tackling the issue in a proactive way:

Consider whether there is a disability present. When an individual exhibits inappropriate behaviour that might be due to a mental health illness or disability, the board and management have a duty to assess the situation and determine if such a disability is present. Each situation or person needs to be

assessed individually, and some certainty should be obtained as to the condition and needs of the individual before the corporation undertakes measures that might affect the person negatively. The accommodation process is not a "one size fits all" process. Condominium directors and managers, as well as some staff, would benefit by ongoing human rights training and education.

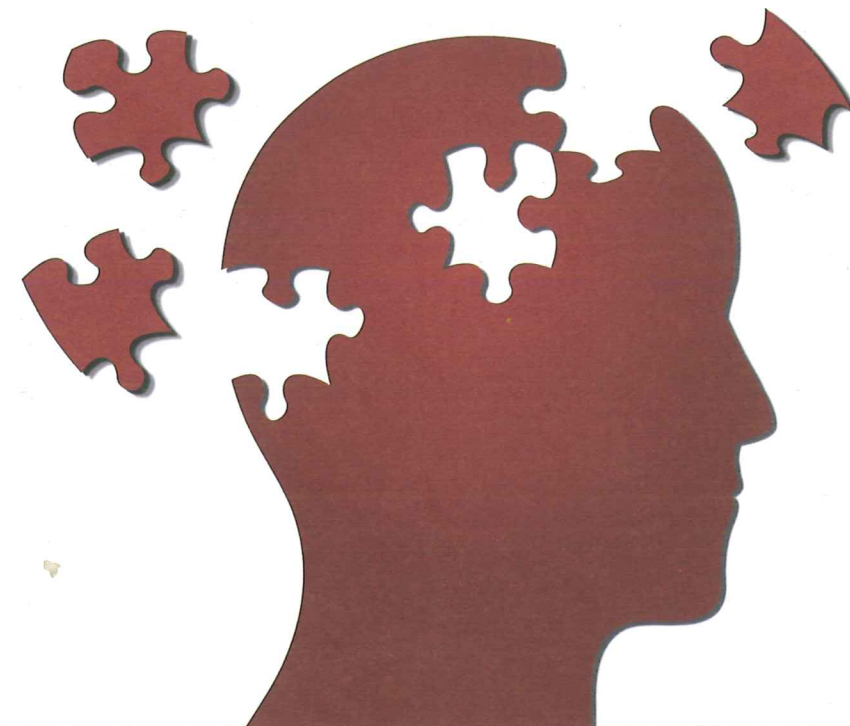
Provide an opportunity to request accommodation. As a general rule, condominium corporations are not expected to accommodate disabilities of which they are unaware, however, it is often the case with mental health illnesses and addictions that the nature of the

disability may leave you unable to identify that the individual has a disability or that they have accommodation needs. Often times those suffering from a mental illness or addiction are reluctant to disclose their disabilities. Condominium corporations can take steps to avoid this situation by having a proactive accommodation policy and procedure process in place. This may include providing a standard form to every new occupant which asks whether they require accommodation of any disability. Corporations must respond to all accommodation requests in a meaningful and timely manner, recognizing that, in many instances, the corporation may have to pay

for those accommodations. Ensuring every occupant is aware of the process, whether or not they require accommodation, will go a long way in preventing discrimination in the condominium complex.

Consult with the individual. It is important to consider a range of strategies to address behaviour issues that are disruptive or potentially dangerous to other occupants in the condominium. Often, boards are quick to jump to ask legal counsel to write a letter to the disruptive occupant. It is important to consider all the circumstances and, unless there is an obvious risk of physical harm occurring, take time to speak with the occupant before escalating the process. By working together with the occupant's family, the condominium corporation can develop a crisis response plan, which may include the occupant's family members being available by phone and willing to intervene when behaviour is disruptive.

Maintain confidentiality in the process. Condominium corporations can request medical information to support a unit occupant's claim that he or she has a disability that requires accommodation; however, a condominium corporation is not entitled to request the specific nature of the disability or





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diagnosis. The purpose of the medical information is to support the existence of a disability (not to identify what it is) and provide information to the condominium corporation about how to best support the unit owner. In doing so, condominium should ensure that extra precautions are taken to maintain confidentiality with respect to this medical information.

Have clear anti-discrimination and anti-harassment policies. Under the Occupational Health and Safety Act, each condominium corporation and property management company should already have policies in place relating to workplace violence and harassment risks and response procedures to help protect employees and contractors serving the property. It is a short step from there to also make policies to address the potential for harassment or discrimination that could be suffered by unit owners and occupants. These policies should include protocols for submitting accommodation requests, responding to accommodation requests, and involving third party professionals where necessary. Implementing these types of policies will send the positive message that discriminatory behaviour will not be tolerated at the condominium.

Remove barriers. Condominium corporations should, on a regular basis, consider whether there are physical or procedural barriers affecting use or enjoyment of the property or in the way services are provided. Physically, when condominium corporations are undergoing any kind of renovation or modification to the common elements, primary consideration should be given to the principles of inclusive design. Procedurally, consideration

should be given to whether communication and processes relied on by the board and management allow all owners an equal opportunity to be informed of and participate in the governance of the condominium.

Conclusion

There are many steps a condominium corporation can take to prevent discrimination and address human rights issues in the condominium complex. Design inclusivity, the removal of barriers, individual needs assessment for unit occupants, and a sincere effort to accommodate will go a long way toward ensuring individuals feel that they are supported members of the community and will help protect the condominium itself from potential claims and liability. ◀

Maria Mavrikou is an associate lawyer with Clifton Kok LLP practicing primarily in the area of condominium management law and advocacy. Maria assists property managers, condominium boards and unit owners in an array of matters including indemnity agreements, declaration and by-law amendments, compliance letters and helping resolve unit owner disputes, through mediation, the Human Rights Tribunal and in the Superior Court.



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