

Supreme Court of British Columbia Upholds Adults-Only Bylaw

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Many strata corporations in British Columbia have adopted age restriction bylaws. Several years ago, in the case of *Marshall v. Owners, Strata Plan NW 2584 (1996)*, 27 BCLR (3D) 70, the Supreme Court of British Columbia found a bylaw to be enforceable that restricted the age of residents to 55 years of age and over, with an exception being made for spouses. In October 2004, in the case of *Drummond v. The Owners, Strata Plan NW 2654* ([2004] B.C.J. No.1405), the Court found a bylaw to be enforceable that restricts the age of residents to 19 years of age and over. This case is summarized below.

The Strata Corporation was built in the late 1980's and marketed as an adults-only complex. The first age restriction bylaw was registered in 1987 and it prohibited residency for persons under the age of 40 years. A new bylaw was passed in November 2001 that prohibited residents under the age of 19 years

In September 2002 Drummond and her son, who was then 13 years of age, came to live with a resident who had moved in during September 2001. That fall she purchased the townhouse. The Strata Corporation corresponded with Drummond about the bylaw violation and in February 2003 a bylaw enforcement hearing was held. The Council found that she was in breach of the bylaw and she was notified in writing that she would be fined \$200.00 per week as per the bylaws. The Strata Corporation commenced a Small Claims Action to collect payment of the fines, and Drummond commenced a Petition in the Supreme Court of British Columbia alleging that the bylaw was void and that she had been treated in a substantially unfair manner.

The solicitor for Drummond argued in Court that any breach of the *Human Rights Code*, whether or not it would apply to Drummond, would make the bylaw void. He relied on section 10 of the *Human Rights Code*, which sets out prohibited grounds of discrimination involving tenancies. Such prohibited grounds include both age and family status. He argued that a tenant would be able to rely on section 10 of the *Human Rights Code* because it prohibits discrimination on the basis of family status and age and so his client should also be able to rely on this protection.

The judge did not accept that Drummond, as an owner, should be able to rely on the provision in the *Human Rights Code* that deals with discrimination against tenants. He accepted the argument made by the writer that section 10 of the *Human Rights Code* has no application to Drummond's situation. He did not decide the question of whether the bylaw would be enforceable against a tenant.

The judge considered the wording of the bylaw and found that it affects only those under 19 years. He found that section 9, and in particular, section 9(c) of the *Human Rights Code* was relevant, which provides as follows:

Discrimination in purchase of property

9 A person must not

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or

(c) discriminate against a person or class of persons regarding a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability, sexual orientation or sex of that person or class of persons.

The judge noted that there is no reference to family status or age in section 9 as prohibited grounds of discrimination. He found that the bylaw was a legitimate and justifiable restriction on the use of the townhouses and found the bylaw to be enforceable.

Before deciding that the bylaw was enforceable, the judge considered the wording of the bylaw, and the steps that the Council had taken to enforce the bylaw. As a result, if an age bylaw is being proposed for your strata corporation or your strata council needs to enforce an age bylaw against a resident, we recommend that the council seek legal advice.

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