

September 23, 2019

ARE ALL ANIMALS WELCOME IN YOUR BUILDING?

Service animals, ranging from guide dogs to emotional support animals, often present challenges to commercial building owners, who not only must comply with legal requirements but wish to be supportive of their building occupants – up to a point.

Many commercial property owners actually do not wish to accommodate animals out of concern that their building may not have been intended for use by animals and they do not know what they might be getting into by being “too” accommodating. However, there is a significant difference between pets and service animals, and there are many employers who want to allow employees to bring their pets to work. If those employers operate out of buildings that do not welcome animals, conflicts may arise.

The question is, can a commercial building owner refuse to accommodate the presence of animals in a building? Some commercial leases state that animals, birds and other pets are not allowed. This is a contractual matter that is not generally overridden by legislation affording rights to building occupants (unlike residential tenancy laws for occupants of residential dwellings). However, there are laws against discrimination towards disabled persons and it is important to be aware of them in the context of a commercial building.

Service Animals

All Canadian provinces have legislation prohibiting discrimination against disabled persons. Where legislation requires a building owner to facilitate building access by a disabled person, a building owner must be aware of both human rights and access legislation.

Generally, all Canadian provinces recognize a service animal as one that provides physical assistance to a disabled person. There are some provinces where the legislation focuses on dogs and others where the broader word “animal” is used.

A guide dog has been trained at a designated facility to be a guide for a blind person. A service animal is often identifiable by virtue of a vest or harness or other visual cue. Alternatively, a service

animal may have been prescribed by a regulated health professional and the person who is accompanied by the animal can provide documentation to that effect. Some service animals are not readily identifiable as such, but nevertheless qualify. Further along the animal spectrum is a pet, which is an animal kept for companionship or pleasure, but is not characterized as a guide dog or service animal.

The presence of pets in a building may be regulated by a commercial building owner without significant fear of reprisal. By contrast, the duty of a commercial building owner to welcome all service animals is amply provided for in legislation across the country.

Human Rights

Starting with the assumption that in all Canadian provinces disabled persons have a right to equal treatment with respect to goods and facilities, accommodation, contracts, employment, etc., it is fundamental that employers and places accessed by the public (including office buildings, retail properties, restaurants and entertainment venues) not discriminate against disabled persons.

Simply put, commercial properties must be managed with a view to accommodating service animals. Failure to do so is a human rights violation, unless there is reasonable justification for the discrimination.

The Supreme Court of Canada has held that for a decision to discriminate to be considered reasonably justifiable, the decision must pass three tests. Was the decision:

1. *rationaly* connected to achieving a *legitimate purpose*?
2. made with an *honest and good faith belief* that it was *necessary* to achieve the *purpose*?
3. *reasonably necessary* to achieve the purpose (where showing reasonable necessity requires demonstrating that it is *impossible* to accommodate the individual without undue hardship)?

The approach ranks accommodation of paramount importance.

Other Legislation

Plenty of statutory frameworks across the country pertain to blind persons' rights in respect of guide dogs, as well as accessibility requirements for individuals with disabilities. Under most legislation and regulations, it is quite clear that service animals are generally permitted in public spaces. There are certain regulations prohibiting animals or birds where food is manufactured, prepared, processed, packaged, served, transported, or offered for sale. However, most legislative and regulatory regimes permit service animals in dining areas of restaurants.

Practical Considerations

A building owner is rightfully concerned about how a service animal spending several hours within the building will be handled, in terms of its own physical needs (such as nourishment, exercise, excretions), and how the animal's owner will contend with emergencies, travel routes, and situations involving interactions with other building occupants who may suffer allergies or phobias, etc.

Many modern employers have thoughtfully established guidelines and facilities for animals at work and are comfortable working with building owners to provide clarity about how their policies and practices can be integrated with first-class property management.

Communication and protocol focused on accommodation are critical aspects of ensuring compliance with human rights and other legislation and regulations concerning service animals accompanying disabled persons. To the extent that service animals accompany individuals who are not employed at the building they wish to

enter, commercial building owners must train their property management and security personnel to respond appropriately and lawfully with regard to accommodation and the rights of disabled persons to receive equal treatment.

Service Animal Case Law

There have been a number of decided cases where the applicant was denied access to a restaurant when accompanied by their service dog. Courts have consistently held in favour of the complainants.

Although most of the case law concerns dogs, it is easy to conclude that the outcomes would be similar in the case of other service animals. By definition, an animal is a service animal if it is readily apparent that the person requires the animal or the person produces certification.

It is generally recognized that a person seeking to be accompanied by a service animal in a public space should be accommodated. While complaints of denied access to commercial properties do not seem to have been frequently recorded, landlords likely cannot point to lease clauses prohibiting animals as a defence against a complaint of discrimination.

Conclusion

Accommodation consists of whatever is required under the circumstances to avoid discrimination. Owners of commercial properties must be aware of their legal duties and establish procedures for animals in order to comply with the requirements in support of disabled persons accompanied by service animals. This is true whether or not an owner wishes to attract pet-friendly employers as tenants.

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.



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