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## Is it legal to deck the lights?

### Recent ruling opens a Pandora's box

Can a condominium corporation prohibit Christmas lights on the exterior of the buildings? The Supreme Court of Canada may say no, but a veteran Toronto condominium lawyer believes the decision is wrong.

Last summer, I wrote about a landmark decision of the Supreme Court of Canada, which ruled that sincere personal religious beliefs override the terms of a condominium declaration.

The case originated at a luxury condominium in Montreal known as Place Northcrest.

A group of Orthodox Jewish owners in the project erected temporary religious huts, known as sukkahs, on their balconies, despite a prohibition in the building declaration. During the nine-day festival of Sukkot, observant Jews take their meals and conduct religious ceremonies in the sukkahs.

After the condominium corporation obtained an injunction prohibiting construction of the religious huts, the owners fought back.

In the case of *Syndicat Northcrest v. Anselem*, the Supreme Court ruled that if sincerely held religious beliefs conflict with condominium rules, the rules must give way to the religious beliefs and are subject to the charter rights and freedoms of every Canadian.

The exterior of virtually all condominiums in Ontario including balconies, roofs, and outside windows, walls and doors, are part of the common elements. No individual owner has the right to attach anything to the common elements unless the rules provide for it.

This prohibition includes satellite dishes, clotheslines, radio antennas, and of course, Christmas lights and decorations.

Certainly, Christmas lights are part of the holiday tradition, but are they dictated by a religious belief? If so, then anyone putting up lights on condominium common elements might be protected by the Syndicat Northcrest decision. If they're not part of a religious belief, condominium boards would be justified in prohibiting them.

Toronto development lawyer Harry Herskowitz, of DelZotto Zorzi LLP, believes that the Syndicat decision raises a host of problems for condominium corporations, owners and lawyers.

In an impassioned critique of the case at a Law Society seminar last month, Herskowitz explained his belief that the decision is wrong.

Condominium development lawyers, he says, have the unenviable task of drafting documents that are clear, unambiguous and most of all, enforceable. In his view, the Syndicat case has opened a "Pandora's box of potential conflicts" between condominium corporations and their boards, on the one hand, and, on the other, an endless succession of unit owners whose diverse beliefs might impact future use of common elements.

Owners look to the declaration, rules and bylaws to preserve a uniform look and maintain values. The Supreme Court, says Herskowitz, ignored the legitimate interests of all the unit owners in having the building's luxury style, design and aesthetic appearance maintained at all times.

Herskowitz also argues that when owners knowingly and freely buy into a project with restrictions on the use of common elements, they have waived their rights to complain at a later date that their religious or other beliefs have been infringed.

In the wake of the Syndicat decision, condominium residents will have increasing difficulty relying on the enforceability of condominium rules if they are subject to attack by individuals who don't like them.

For example, one condominium corporation is having difficulty enforcing a prohibition on satellite dishes erected on the common elements. One unit owner maintains that he needs the dish to get broadcasts of Baptist church preachings, fundamental to his religious beliefs. The fact that he'll be able to watch ESPN sports and the Playboy channel is just a lucky bonus.

Unless the rules violate a fundamental human right, says Herskowitz, the interests of the collective owners to enforce and preserve the integrity of those restrictions should prevail.

Even though I am a strong supporter of civil liberties and the Charter rights of all Canadians, I must admit that Herskowitz has a good point. His argument that the Syndicat case went too far is very compelling.

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