HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Paul DiSalvo

Applicant

-and-

Halton Condominium Corporation No. 186

Respondent

DECISION

Adjudicator:	Michelle Flaherty
Date:	December 8, 2009
File Number:	2008-00613-I
Citation:	2009 HRTO 2120
Indexed as:	**DiSalvo v. Halton Condominium Corporation No. 186**

APPEARANCES

Paul DiSalvo, Applicant	)	Sharmaine Hall, Counsel
Halton Condominium Corporation No. 186, Respondent	)	John Wigle, Frank Kolenko, and Ronald Danks, Counsel

[1] This Application, filed under s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended, (the "*Code*") raises a legal issue about the content of the duty to accommodate.

[2] The respondent is a condominium corporation constituted under the *Condominium Act, 1998,* S.O. 1998, c. 19, as amended, and operated by a volunteer board of directors. The corporation consists of a complex of approximately 24 townhouse units.

[3] The applicant owns and resides in one of the townhouse units. He has muscular dystrophy, which, among other things, significantly limits his mobility, most notably, his ability to enter and exit his home through the front door of his unit.

[4] In the spring of 2008, the applicant advised the respondent that he would require accommodation in the form of a ramp at the front door of his townhouse unit. The respondent feels that, while a ramp is an appropriate form of accommodation in the circumstances, it falls to the applicant to bear the full costs associated with it.

[5] The principle issue in dispute is who bears the cost of the reasonably necessary accommodation measures in the circumstances. The Application also raises a question as to whether the operation of the *Code* conflicts with the respondent's obligations under the *Condominium Act*. More specifically, the respondent contends that it has an obligation to ensure the applicant signs an agreement in regards to any alterations made to his condominium unit. The applicant refused to sign such an agreement and, according to the respondent, this refusal placed it in conflict with its obligations under the *Condominium Act.*

[6] For the reasons that follow, I find that the respondent failed to meet both its procedural and substantive obligations to accommodate under the *Code.* I have also concluded that there is no inherent conflict between the *Condominium Act* and the *Code*.

BACKGROUND

[7] The facts are largely undisputed. The parties agree that the applicant has a disability and that, in order to enter and exit by the front door of his home, he requires a ramp. While there is another method of accessing the applicant's unit (using an elevator to the parking garage), the parties agree that for safety and other reasons it is also necessary for the applicant to have access to his unit through the front door.

[8] The parties agree that a stainless steel removable (or semi-permanent) ramp with railings is appropriate accommodation in the circumstances, provided that it is properly installed and is covered with a non-skid surface. They also agree that some modifications to the walkway leading up to the front door of the applicant's unit are required. It will be necessary to cut the curb and alter the slope of the walkway, which will require relaying some of the walkway's interlocking brick.

[9] The parties agree that the approximate cost of the ramp is $1,350, including installation. The cost of necessary modifications to the walkway and curb is approximately $2500. In addition to this, the parties agree that there will be incidental costs related to the ramp, possibly insurance, storage, snow removal and costs associated with dismantling and reinstalling the ramp, likely two times per year. The cost of removal and storage of the ramp is estimated at $73 per visit (twice per year). The respondent expects the remaining incidental costs to be nominal.

[10] The parties agree that the front entrance, step, landing, walkway and curb side of the condominium units are part of the condominium's "common element". This means that the corporation is responsible for the maintenance and upkeep of these aspects of the condominium units. Importantly, the accommodation measures at issue in this Application relate entirely to the condominium's common element.

[11] The following provisions of the *Condominium Ac*t are relevant to this Application:

> Changes made by owners
>
> 98(1) An owner may make an addition, alteration or improvement to the

common elements that is not contrary to this Act or the declaration if,

(a) the board, by resolution, has approved the proposed addition, alteration or improvement;

(b) the owner and the corporation have entered into an agreement that,

(i) allocates the cost of the proposed addition, alteration or improvement between the corporation and the owner,

(ii) sets out the respective duties and responsibilities, including the responsibilities for the cost of repair after damage, maintenance and insurance, of the corporation and the owner with respect to the proposed addition, alteration or improvement, and

(iii) sets out the other matters that the regulations made under this Act require;

No notice or approval

(2) Clauses (1) (c) and (d) do not apply if the proposed addition, alteration or improvement relates to a part of the common elements of which the owner has exclusive use and if the board is satisfied on the evidence that it may require that the proposed addition, alteration or improvement,

(a) will not have an adverse effect on units owned by other owners;

(b) will not give rise to any expense to the corporation;

(c) will not detract from the appearance of buildings on the property;

(d) will not affect the structural integrity of buildings on the property according to a certificate of an engineer, if the proposed addition, alteration or improvement involves a change to the structure of the buildings; and

(e) will not contravene the declaration or any prescribed requirements.

When agreement effective

(3) An agreement described in clause (1) (b) does not take effect until,

(a) the conditions set out in clause (1) (a) and subsection (2) have been met or the conditions set out in clauses (1) (a), (c) and (d) have been met; and

(b) the corporation has registered it against the title to the owner's unit.

[12] The respondent is concerned that there is a conflict between its requirement to

comply with s.98 of the *Condominium Act* and the obligation to accommodate under the *Code*. In this regard, the respondent asked the applicant to sign an agreement pursuant to s. 98 on the basis that the applicant would bear the costs and responsibilities for the ramp. The applicant refused to enter into such an agreement.

THE ISSUES

[13] The Application raises the following issues:

- Does the respondent's duty to accommodate include an obligation to assume the costs of reasonable accommodation measures?
- Did the respondent meet its procedural duty to accommodate the applicant?
- Is there a requirement that the applicant enter into a s. 98 agreement under the *Condominium Act* and, if so, does this requirement conflict with the application of the *Code*?
- In the event the respondent breached the *Code*, what is the appropriate remedy?

ANALYSIS

[14] The relevant provisions of the *Code* are:

> 2(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.
>
> 9 No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.
>
> 11(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
>
> (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or
>
> (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a

right.

> 17(1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.
>
> (2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.
>
> (3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations
>
> 45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:
>
> 1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
>
> 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
>
> 3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.

Does the respondent's duty to accommodate include an obligation to assume the costs of reasonable accommodation measures?

[15] The parties have agreed that the respondent has a duty to accommodate the applicant under the *Code.* They have also identified and agreed upon a reasonable accommodation measure (the ramp described in paras. 8 and 9 above). The remaining issue is who bears the cost of the accommodation in the circumstances.

[16] Importantly, the respondent does not argue that bearing the cost of the ramp and its upkeep would constitute an undue hardship for the corporation. The respondent is a

small corporation made up of approximately 24 unit holders. It argues that, in deciding who should bear the cost of the ramp, I must have regard to the interests of the other unit holders.

[17] It is clear that the right to equal treatment with respect to occupancy of accommodation guaranteed at s. 2(1) of the *Code* applies to condominiums: *York Condominium Corporation #216 v. Dudnick,* (1991) 79 D.L.R. (4th) 161 Div. Ct., and *Metropolitan Toronto Condominium Corporation No. 946 v. J.V.M.,* 2008 CanLII 69581 (O.N.S.C.).

[18] Equal treatment with respect to occupancy requires more than establishing that all townhome units have essentially the same front entrance. Equal treatment under the *Code* requires that (where this can be achieved with accommodation measures short of undue hardship) all occupants, including those with disabilities, have meaningful access to their condominium units. This is contemplated in section 11 of the *Code.*

[19] In my view, it is clear from the jurisprudence that the duty to accommodate includes an obligation to assume the cost of providing accommodation measures. This principle, implicit in much of the jurisprudence, is discussed more explicitly in *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624. In paragraph 29 of that decision the Supreme Court reasoned that, where there is discrimination, a hospital's duty to accommodate includes an obligation to provide free interpretive services to deaf persons.

[20] In that case, it would not have been sufficient for the hospital to allow deaf persons to bring and pay for their own interpreter: the obligation is a positive one and includes the assumption of the costs of reasonable accommodation short of undue hardship. See also *Howard v. University of British Columbia* (1993), 18 CHRR D/353 (BCCHR).

[21] The respondent states that the ramp would be almost entirely for the benefit of the applicant and his wife; it would be of little or no benefit to any other unit holders.

The respondent feels it has an obligation to use corporation funds in a way that benefits a large number of its unit holders and suggested that it would not be appropriate for it to expend funds for the sole benefit of one owner. For the reasons set out below, I believe this argument is fundamentally inconsistent with the principles laid out in the *Code.*

[22] In support of its position, the respondent cites *Metropolitan, supra,* in which the Superior Court concluded at para. 105:

> a corporation's duty to accommodate to the point of undue hardship should be considered in light of its obligations to other owners. The burden of funding the corporation falls on the owners. The cost of accommodation is borne by the owners at least in the first instance, and ultimately, if the accommodated owner does not reimburse the corporation. Of greater significance is the health and safety risk to other owners, each of who makes his or her home in this condominium.

[23] The facts of that case are quite different from those in this Application. In *Metropolitan,* the Superior Court was dealing with an application by the condominium corporation for an order that the resident vacate and sell her unit. The application came on the heels of an earlier Superior Court decision, where the Court had ordered the resident to comply with the provisions of the *Condominium Act.* The condominium corporation argued that, despite the previous court order, the resident failed to comply with the provisions of the *Act* and was creating a health and safety hazard to other unit holders. It felt that, in the circumstances, it was appropriate to order the resident to vacate the unit.

[24] The resident in *Metropolitan* argued that she should not be required to vacate the unit because the condominium corporation had failed to accommodate her disability pursuant to the *Code.*

[25] I agree that in determining the criteria of undue hardship in the context of a condominium corporation, it is appropriate to be attentive to the rights of the other owners. However, in this case, it is clear (and has been conceded by the respondent), that even in light of the rights and interests of other unit holders, the requested accommodation does not amount to undue hardship for the corporation.

[26] *Metropolitan* is distinct from this case in two important respects. First, the respondent here has not argued that the cost of the ramp creates an undue hardship. Instead, it has asked me to consider other owners and, as I understand it, conclude that their interests in the use of funds for the good of the majority should inform the content of the applicant's right to accommodation under the *Code*. I do not think the Court's decision in *Metropolitan* supports such a position.

[27] The respondent has conceded that there is no undue hardship in the circumstances. To the extent that the respondent is suggesting that some threshold other than undue hardship applies in the condominium context, I disagree. In my view, *Metropolitan* stands for the proposition that the interests of other unit holders are relevant to determining whether there is undue hardship. It does not create a different threshold, nor does it suggest that (absent undue hardship) the interests of other owners qualify the rights of the applicant to accommodation.

[28] The second way in which this case is different from *Metropolitan* is in regards to the nature of the interests at stake. In that case, the resident's behaviour created a health and safety risk to other unit holders. In finding that undue hardship existed in the circumstances, the Court found the health and safety risks to be "of greater significance" that the financial costs associated with the resident's failure to respect the condominium's by-laws, policies and other documents. In this Application, it was never contended that the accommodation measure requested creates a health and safety risk for unit holders.

[29] The respondent stated that, under the *Condominium Act*, it cannot use its reserve funds to pay for the requested accommodation measure. The only way for it to bear the cost of the ramp, would be to create a special levy to be borne by all unit holders. The respondent argues that this is not a use of funds that benefits a majority of unit holders.

[30] The respondent distinguishes *Mahoney obo Holowaychuk v. The Owners, Strata Plan #NW332 and others*, 2008 BCHRT 274 (CanLII), a case where a condominium

corporation was ordered to provide and pay for a ramp at the main entrance of a large, apartment-style building. Indeed, the respondent suggested that its own position might have been different had the applicant's request related to a main entrance used by other individuals who might also have benefited from a ramp. The respondent states that it does not have an obligation to bear the costs of an accommodation measure that is for the almost exclusive use of one owner.

[31] In *Holowaychuck,* the British Columbia Human Rights Tribunal concluded that a ramp was an appropriate accommodation measure in the circumstances. It then discussed the allocation of the costs of the ramp. At para. 136, it wrote:

> I decline to issue the order sought by the Owners: that is, to require Ms. Holowaychuk to bear the full cost of the installation of the ramp in question. I note that this case involves alterations to the common property, that Ms. Holowaychuk will not be the only individual utilizing the ramp, and that requiring her to bear the full cost of the installation of the ramp would not be in accordance with the purposes of the Code. Ms. Holowaychuk will, of course, bear her proportional share of any costs levied by the Strata Council in this regard.

[32] In my view, whether there is one or multiple users of the ramp, it would not be in accordance with the purposes of the *Code* to require the applicant to bear the costs of the accommodation measure. This view is consistent with *Eldridge, supra,* where the Court ordered that interpretive services be provided free of charge, even though such services (paid for by public funds) were for the exclusive benefit of one patient.

[33] As the Supreme Court of Canada explained in *Eldridge, supra* (at paras. 54 - 55), persons with disabilities face persistent social and economic disadvantages. Equal treatment instantiates a desire to rectify and prevent discrimination against persons with disabilities. To accept the respondent's argument that the applicant bears the cost of the ramp would be inconsistent with the *Code* and would add to, not remedy, social and economic disadvantages. Even where the applicant is the only individual benefiting from the accommodation measure, unless undue hardship is established, the *Code* requires that the costs of the reasonable accommodation be born by the condominium corporation.

[34] I find that the duty to accommodate under the *Code* requires the respondent to assume the full costs of the ramp, including its installation, upkeep and storage.

Did the respondent meet its procedural duty to accommodate the applicant?

[35] The procedural duty to accommodate requires the respondent to make appropriate inquires into the nature of the applicant's disability-related needs and give thought and consideration to the issue of accommodation, including what, if any, steps could be taken to provide accommodation. See *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 at paras. 64 - 65

[36] Most of the exchanges between the parties in regards to the request for accommodation were in writing and are not contentious.

[37] On May 21, 2008, the applicant emailed Peter Shepherd, a member of the respondent's board of directors, and indicated that he would, at some stage in the future, require a ramp "of some sort" in order to accommodate his disability.

[38] The respondent's board of directors discussed the applicant's request at its board meeting on June 3, 2008. In a letter dated June 3, it took the position that the applicant should pay the full cost of any ramp, including all legal and engineering costs, the cost of a complete set of plans for each condominium owner, the costs of facility rental for meetings and voting purposes, and the cost of preparing and printing all required materials. The president indicated also that the ramp might require approval, possibly by 66.66% of the corporation's unit holders.

[39] The applicant sought to meet with the board to discuss the matter further. Through a series of emails, the respondent advised the applicant that he could attend a board meeting only if he provided, in advance of the meeting, a "legal opinion that states the *Condominium Act* has no jurisdiction in the building of a ramp to a private townhouse entrance". The respondent stated that this opinion should come from an Ontario lawyer and should clearly address an Ontario ruling dealing with the subject matter of the applicant's request for accommodation.

[40] The applicant provided two documents from the Centre for Equality Rights in Accommodation ("CERA). In these documents, CERA indicated that it felt the *Code* had primacy over the *Condominium Act*.

[41] CERA's documents were not sufficient for the respondent's purposes. In an email dated August 21, 2008, the respondent wrote:

> The Board of Directors of Halton Condominium has a duty and responsibility in operating Halton Condominium Corporation #186. An opinion from an employee of CERA does not give the Board of Directors authority to set aside those responsibilities.

[42] The applicant responded that it would not be possible to provide an opinion of the nature requested by the respondent. He offered to bring a representative from CERA to the board meeting, but this offer was declined. The respondent did offer to hold a special meeting of the board of directors to discuss the applicant's request for a ramp, but imposed the same condition: that the applicant first provide an opinion from an Ontario lawyer stating that the *Condominium Act* is of no application in the building of a ramp.

[43] On August 28, 2008, the applicant provided a letter from his occupational therapist indicating that he required a permanent ramp. This is the first time the applicant provided details to the respondent regarding the nature of the ramp he was seeking.

[44] In a letter dated September 4, 2008, the respondent stated that its position had not changed. It maintained the position articulated in its June 3, 2008 letter.

[45] The applicant filed the Application on October 16, 2008. The applicant was out of the country from approximately mid-November 2008 to mid-April 2009. A mediation with the Tribunal, originally scheduled for mid-March, was postponed due to the applicant's unavailability.

[46] Although there were emails, letters and telephone exchanges regarding the legal

opinion and the request to attend a board meeting, the parties did not have any substantive discussions about the nature of the accommodations until June 2009. The parties met to discuss this issue for the first time (with exception of the mediation) in a series of two meetings in June 2009. The applicant's occupational therapist attended as did a vendor of home health care equipment.

[47] Following these meetings, the occupational therapist concluded that a removable or semi-permanent ramp with railings was appropriate, provided it is properly secured and covered in a non-skid surface.

[48] On June 15, the respondent held its annual general meeting ("AGM"). Prior to this meeting, the respondent advised the applicant that the president would make an oral presentation to the owners about the Application. The respondent provided the applicant with a copy of the intended remarks in advance of the meeting. The respondent invited the applicant to also make a statement at the AGM provided that he give the respondent a copy of his intended remarks in advance of the meeting. He was advised that, in any event, he would be given an opportunity to speak during the question period of the meeting.

[49] The applicant emailed the respondent and advised that he wished to make oral comments at the AGM. He did not provide his intended remarks in writing, but testified of his intention to raise his points during the question period. When he attempted to do so, however, he was prevented from continuing. Peter Shepherd testified that the respondent's concerns were that the applicant was not asking a question, but sought to make a statement. It was evident from the applicant's testimony that this incident greatly distressed and embarrassed him.

[50] It is evident that, throughout these exchanges, the respondent's reaction to the applicant's request was informed by its understanding of the law. From the outset, it felt that it had no legal obligation to facilitate or pay for the installation of a ramp and its behaviour towards the applicant reflects that position.

[51] I have already concluded that the respondent failed in its substantive duty to accommodate the applicant. I find that by insisting on a position that was wrong, at law, by failing to consider alternatives, and by creating a barrier to substantive discussions, the respondent has also failed to meet its procedural duty to accommodate the applicant.

[52] It is clear that the respondent took the applicant's request seriously and spent considerable time attempting to address it. Peter Shepherd testified that since the applicant's request, the board has met more frequently and has spent a portion of every meeting discussing the request for a ramp. The respondent did make some inquiries into its obligations: it contacted the city regarding permits, it reviewed the Ontario Human Rights Commission website, and it obtained legal advice, although it only did so after the Application was filed.

[53] Beginning in June 2008, there were email exchanges, letters and telephone conversations between the parties. However, the evidence shows that these exchanges were not about the substance of the applicant's request for accommodation: they dealt with preliminary issues such as the respondent's requirement for a legal opinion and the applicant's request to attend a meeting. There were no substantive discussions about the accommodation requested until approximately a year after the request for accommodation was made.

[54] I am troubled by the process adopted by the respondent in these circumstances. Its unwillingness to engage in substantive discussions with the applicant for a full year is, on its own, a sufficient basis to find a failure of the procedural duty to accommodate. Beyond this, the respondent attempted to shift the principal burden of the inquiry into accommodation to the applicant. Rather than take steps to determine the extent of its obligations, it imposed those steps on the applicant as a precondition to having substantive discussions with him.

[55] Before it would meet with him, the respondent required the applicant to provide a clear legal opinion from an Ontario lawyer dealing specifically with the subject-matter of

the application. It rejected the letters from CERA, which address the legal issue, generally. The type of legal opinion requested may well have been impossible to obtain and, in any event, it is certainly not the appropriate threshold for determining whether or not there is an obligation to accommodate. It is unreasonable and in breach of the procedural duty to accommodate to require such an opinion as a prerequisite to substantive discussions.

[56] The respondent cannot abdicate its obligations to conduct its own inquiry (at its own cost) into its obligations under the *Code.* It ought not to have shifted the responsibility and costs of doing so (including engineering, legal and administrative costs) to the applicant.

[57] The respondent points out that the applicant did not provide detailed information regarding the specific nature of the accommodation he was requesting until the June 2009 meetings. I agree that the applicant must participate in the accommodation process. In this case, though, there was no evidence that information about the type of ramp was ever requested by the respondent. Indeed, the applicant repeatedly made attempts to engage in substantive discussions with the respondent and was unsuccessful. The applicant attempted to provide the information requested by the respondent, even though the request was unreasonable. In the circumstances, I find that the applicant met his obligation to participate in and cooperate with the accommodation process.

[58] The respondent argued that it was not ill-intentioned. Its position and its failure to consider alternatives stems from its understanding of the law and its misapprehension of its obligations, not from any particular *animus* against the respondent.

[59] Importantly, though, the jurisprudence is clear that an intention to discriminate is not a necessary element of discrimination: *Cugliari v. Telefficiency Corporation*, 2006 HRTO 7 (CanLII) and *Sinclair v. London (City)*, 2008 HRTO 48 (CanLII). Whether the respondent intended to discriminate or not, the focus of the inquiry is on the effect of its behaviour on the applicant.

[60] Accordingly, I find that the respondent failed to meet its procedural duty to accommodate the applicant.

In order for the ramp to be installed, is there a requirement that the applicant enter into a s.98 agreement under the Condominium Act and, if so, does this requirement conflict with the application of the Code?

[61] Following the conclusion of the hearing of this matter, the respondent asked to make further representations in writing on the narrow issue of the application of s.98 of the *Condominium Act.* I agreed to this request and allowed the applicant to make submissions in response.

[62] I have reviewed the respondent's written representations and, in light of my conclusions, it is not necessary for me to consider further submissions on this issue from the applicant.

[63] In my view, there is no inconsistency or conflict between the *Condominium Act* and the *Code.* It is not for the Tribunal to decide whether the *Condominium Act* imposes an obligation to enter into and register a s.98 agreement in order for the ramp to be installed. However, in the event such an agreement is necessary, s. 98 does not dictate the content of the agreement, nor does it dictate who will bear the cost of alterations to a unit. It simply states that the agreement will allocate the costs and responsibilities between the unit holder and the corporation.

[64] I have concluded that the respondent must bear the cost of the purchase, installation, upkeep, and storage of the ramp. At the hearing, the applicant indicated he was prepared to enter into a section 98 agreement provided the content of the agreement reflected the respondent's obligations under the *Code.* An agreement which allocates the entire cost and responsibility for the ramp to the condominium corporation is consistent with my decision and, it seems to me, compatible with s.98 of the *Condominium Act.*

REMEDIES

[65] The Tribunal's remedial powers are enumerated in section 45.2(1) of the *Code*, which sets out, among other things, the power to order monetary compensation for injury to dignity, feelings and self-respect; the power to order restitution; and the power to direct any party to do anything that promotes compliance with the *Code*.

[66] The applicant seeks an award of $17,000 for loss arising out of the infringement of his rights, including injury to dignity, feelings and self-respect. He also asks that current and future members of the respondent's board of directors be required to undergo human rights training.

[67] The applicant testified that he was greatly affected by the inability to enter an exit his home through his front door. While he can leave his home using the elevator to the parking garage, the parties agreed that it would be unsafe for him to enter or exit the parking garage in a wheelchair or using a walker. As a result, until a ramp is installed, the only way for the applicant to leave his home is in a vehicle through the parking garage. As he requires assistance to put his wheelchair in and out of a car, this means that he can generally only enter or exit his home with the assistance of his wife. The applicant testified that he was greatly affected by this loss of autonomy. His mood and his quality of life have also been deeply impacted.

[68] During cross-examination of the applicant, it was established that the applicant had depression beginning in approximately 2007, but that he has been treated and has had no symptoms of depression since November 2008. The applicant testified that, for at least the period between June 2008 and November 2008, the respondent's behaviour contributed to his depression.

[69] It was apparent from the applicant's testimony that he was deeply affected by the respondent's refusal to meet with him and its refusal to allow him to comment at the AGM, which was attended by almost all of the applicant's neighbours.

[70] The respondent argued that, given that the dispute between the parties involves

a novel legal issue, damages are not appropriate in the circumstances. In the alternative, the respondent argued that the respondent's lack of ill-will or callous behaviour as well as its earnest attempts to address the applicant's concerns should be factors in any damages award.

[71] There is an intrinsic value to the rights enumerated in the *Code*, and the infringement of those rights warrants the assessment of damages: *Sanford v. Koop*, 2005 HRTO 53 (CanLII). I reject the respondent's argument that compensation is not appropriate in the circumstances.

[72] The criteria to be used in assessing the appropriate quantum of compensation for injury to dignity, feelings and self-respect are set out in *Sanford v. Koop*. These include:

- Humiliation experienced by the complainant
- Hurt feelings experienced by the complainant
- A complainant's loss of self-respect
- A complainant's loss of dignity
- A complainant's loss of self-esteem
- A complainant's loss of confidence
- The experience of victimization
- Vulnerability of the complainant
- The seriousness, frequency and duration of the offensive treatment

[73] By the time of the hearing, the applicant had been dealing with the issue of accommodation for approximately 17 months.

[74] In August of 2008, the applicant's occupational therapist advised him that it was no longer safe for him to use the front entrance of his unit. I accept that since August 2008, the applicant has been able to leave his home only with the assistance of his wife. Between approximately mid-November 2008 to mid-April 2009, the applicant was not residing in his unit. This means that, based on the evidence before me, there was a period of approximately eight months where the applicant resided in his unit but could not use the front entrance.

[75] The respondent urges me to conclude that part of the delay in dealing with this matter is attributable to applicant. Certainly, the mediation was postponed for approximately two months because the applicant was out of the country.

[76] The respondent argued that the applicant had an obligation to mitigate his human rights damages. It argued that the applicant should have purchased and installed a ramp and that, had he done so, he could have used his front door earlier. I find, however, that it would not have been possible for the applicant to implement the accommodation measures independently of the respondent.

[77] The respondent argued that by at least September 24, 2009, it had essentially given the applicant permission to install a removable ramp. The applicant disputes this. Leaving the dispute aside, I find that even if the applicant had purchased and installed a removable ramp, the accommodation measures in question go beyond that and contemplate reworking the slant of the walkway and cutting the curb. At the outset of the hearing, the parties agreed that all of these measures were necessary; there was no evidence before me that a ramp alone would have allowed the applicant to access his home from the front door. It would not have been possible for the applicant to rework the walkway or cut the curb without the involvement of the respondent.

[78] In the circumstances, the Tribunal awards $12,000 for injury to dignity, feelings and self-respect. My decision is influenced by the fact that, by the date of the hearing, the applicant had resided in his condominium unit for approximately eight months without use of his front entrance. I have also considered the impact of the respondent's failure to meet its procedural obligations on the applicant. It is clear to me that this contributed significantly to the hurt feelings and loss of dignity experienced by the applicant.

[79] Post-judgment interest is payable pursuant to section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, from the date of this Decision.

[80] The Tribunal is empowered to direct any party to do anything that, in the opinion

of the Tribunal, the party ought to do to promote compliance with the *Code*. It is well-established in human rights law that any order intended to promote *Code* rights and policy "…should be reflective of the facts in the case, should be remedial, not punitive and should focus on ensuring that the key objects of the *Code*, to eradicate discrimination and to ensure future compliance, are achieved in the particular circumstances", see *Giguere v. Popeye Restaurant*, 2008 HRTO 2 (CanLII) at para. 91 and *Smith v. Menzies Chrysler*, 2009 HRTO 1936 (CanLII) at para. 184.

[81] In the circumstances of this case, I think that future compliance with the *Code* is best promoted by requiring that the respondent develop a human rights policy and complaints procedure.

ORDER

[82] To summarize, the Tribunal orders that the respondent:

- pay the applicant the sum of $12,000 in respect of compensation for loss arising out of the infringement of his rights, including injury to dignity, feelings and self-respect, within 60 days of the date of this Decision;
- purchase, install, and maintain a semi-permanent (removable) ramp at the front entrance of the applicant's town house according to the occupational therapist's recommendations by April 1, 2010; and
- within three months of this Order, retain the services of a human rights consultant in order to create and establish a human rights policy and complaint mechanism.

Dated at Toronto, this 8th day of December, 2009.

"Signed by"

Michelle Flaherty
Vice-chair