

Date Issued: May 14, 2012
File: 8507

Indexed as: McDaniel and McDaniel v. Strata Plan LMS 1657 (No. 2), 2012 BCHRT 167

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Melanie McDaniel and Matthew McDaniel

COMPLAINANTS

A N D:

Strata Plan LMS 1657, Metro One

RESPONDENT

REASONS FOR DECISION

Chair:	Bernd Walter
On their own behalf:	Melanie and Matthew McDaniel
Counsel for the Respondent:	Shawn Smith
Date of the Hearing:	April 2, 2012

INTRODUCTION

[1] Melanie McDaniel and Matthew McDaniel, (the “McDaniels”), filed a complaint against Strata Plan LMS 1657, Metro One (the “Respondent”), alleging discrimination in the area of accommodation, service or facility on the basis of physical disability, contrary to section 8 of the *Human Rights Code*.

[2] The Complainants allege that the second-hand smoke of co-residents, from limited common property areas of their strata complex, infiltrated their suite, exacerbated their physical disabilities and that, despite their complaints and efforts, the Respondent failed to adequately or appropriately respond to or accommodate them. I accept at the outset that complaints of member owners against a strata corporation are encompassed by s. 8 of the *Code: Williams v. Strata Council No. 768*, 2003 BCHRT 17; *Konieczna v. The Owners Strata Plan NW 2489*, 2003 BCHRT 38.

[3] In this complaint, brought under s. 8 of the *Code*, the initial burden is on the McDaniels to establish, on a balance of probabilities, that the Respondents discriminated against them with respect to an accommodation, service or facility customarily available to the public because of the grounds alleged. This is referred to as a *prima facie* case.

[4] If the McDaniels succeed in establishing a *prima facie case* of discrimination, the burden shifts to the Respondent to establish a *bona fide* reasonable justification for its conduct.

[5] In order for their complaint to succeed, the McDaniels would need to establish that they suffered from physical disabilities which were exacerbated by second-hand smoke, that the Respondent was aware or ought reasonably to have known of their disabilities and that it failed to accommodate their disabilities by not passing and enforcing a non-smoking bylaw or by failing to utilize other authorities within its mandate.

[6] The Respondent advised the Tribunal that it essentially acknowledged the McDaniels’ allegations and agreed that it had treated them in a discriminatory manner by failing to accommodate their physical disabilities.

[7] The Complainants were self-represented; the Respondent was represented by Shawn Smith at this hearing.

[8] In light of the Respondent's admission that the complaint was justified, the parties agreed that the hearing should focus entirely on the remedies to be afforded the Complainants under s. 37(2) of the *Code*.

[9] This decision sets out the facts upon which the complaint is based; the documentary evidence filed in support of the facts and allegations; the submissions of the parties with respect to the remedies that should be ordered and the Tribunal's orders in respect thereof.

THE UNDERLYING FACTUAL MATRIX TO THE COMPLAINT

[10] The following is excerpted from the Agreed Statement of Facts jointly submitted by the parties at the commencement of the hearing: (Ex 4)

1. Strata Plan LMS 1657 is a 39 unit apartment styled Strata Corporation consisting of four floors and an underground parking garage. It is situated at 20245 – 53rd Avenue, Langley, B.C. (Ex 5, Tab 49)
2. At all material times, the Strata Corporation used the services of a strata manager, NAI Goddard & Smith Real Estate Services Ltd. (“NAI”), to assist it in carrying out its affairs. Until the summer of 2009, the manager assigned to the Strata Corporation was D.G. After that, it was J.M.
3. On March 28, 2008, the Complainants, Matthew and Melanie McDaniel, purchased strata lot 28 in Strata Plan LMS 1657 (otherwise known as “Unit 303”), and moved in shortly thereafter. Melanie was six months pregnant at the time.
4. Soon after moving into Unit 303, the McDaniels experienced second-hand smoke entering their strata lot as a result of other residents smoking on their patios and decks below (in particular units 101, 104 and 203).

5. In June 2008, the Complainants had correspondence and discussions with the Strata Corporation regarding their dog and the need to have it for medical reasons and they provided a physician's note to that effect. (Ex 5. Tabs 1,2)
6. On June 20, 2008, Melanie McDaniel emailed NAI asking whether smoking was allowed on the common property. (Ex 5, Tab 3)
7. The McDaniels wrote to NAI on July 15, 2008 advising of second-hand smoke entering their strata lot and asking what could be done about it. (Ex 5, Tab 4)
8. The McDaniels say they were advised that the Strata Corporation was of the view that smoking was not prohibited on the limited common property (being the patios and balconies) and it was suggested that the McDaniels purchase an air conditioner, which they eventually did in August 2009. (Ex 5, Tab 6)
9. After consulting with an organization known as Smoke Free BC, the McDaniels began keeping a log of the various smoke-related incidents that occurred and how it affected their health. That log was later provided to the Strata Corporation through NAI. (Ex 5, Tab 6)
10. The McDaniels wrote to NAI again in July 17, 2009 complaining about the second-hand smoke entering their strata lot. (Ex 5, Tab 5)
11. Between July 17 and 20, 2009, the McDaniels spoke to the owners of Units 203 and 101 asking those owners to call them and advise when they were going to smoke so that the McDaniels could close their windows. The owners of Unit 101 said they would call, but did not. The Owner of Unit 203 advised that the person responsible for the smoke was a tradesman whose work was almost complete.
12. Having received no reply to their July 17 letter, the McDaniels again wrote to NAI in August 10, 2009, complaining of the second-hand smoke and asking for a bylaw amendment to prohibit smoking on the balconies and patios. (Ex 5, Tab 6)

13. NAI responded to that on August 18, 2009, on behalf of the Strata Corporation, advising that:
 - (a) The Strata Council understood their problem;
 - (b) The Strata Corporation would write to the units which were smoking and remind them that cigarette smoke was included under the nuisance bylaw;
 - (c) It would not agree to the McDaniels' request to present a no-smoking bylaw at the upcoming Annual General Meeting; and
 - (d) 25% of the owners could sign a demand requesting the Respondent hold a special general meeting. (Ex 5, Tab 7)
14. The Strata Corporation also included a notice with the minutes of the August 18, 2009 Strata Council Meeting asking residents who smoked to be considerate of others. (Ex 5, Tabs 8,9,10)
15. The McDaniels wrote again to NAI on September 3, 2009, complaining of the second-hand smoke and again asking for a bylaw amendment to prohibit smoking on the balconies and patios. They also requested permission to circulate a survey amongst the owners regarding their views on smoking. (Ex 5, Tab 11)
16. Around September 8, 2009, the McDaniels distributed a survey amongst the owners, roughly half of which were returned. The results of the survey were compiled and eventually reported to the Strata Council.
17. NAI responded on September 10, 2009, on behalf of the Respondent, advising that the results of the survey were not enough to call a special general meeting and that a demand pursuant to the Strata Property Act and signed by the owners was required. (Ex 5, Tab 12)
18. On October 27, 2009, the McDaniels wrote to NAI:
 - (a) Advising that second-hand smoke, although less, continued to enter their strata lot;
 - (b) That they were worried about the upcoming summer;

- (c) Advising that there was now a problem with smoking in the common areas;
 - (d) Asking whether they could distribute a second survey to gain the support of the owners for a Special General Meeting to amend the bylaws; and
 - (e) Providing the Strata Corporation with a log pertaining to smoking incidents they experienced. (Ex 5, Tab 13)
19. NAI responded, on behalf of the Strata Corporation, with a letter, dated November 25, 2009, confirming that signs were posted around the building stating “No smoking in common areas” and advising the McDaniels that they could not use the Strata Council collection box to do so (as had been done with the previous survey) and to notify other residents that the survey was not sent by the Strata Corporation. (Ex 5, Tab 14)
20. On December 15, 2009, the McDaniels emailed J.M. at NAI seeking a reply to the question regarding whether another survey could be distributed. Ms. Ma replied advising that a second survey could be distributed, as long as it was clear that it was the actions of the McDaniels. (Ex 5, Tab 15)
21. A second survey to demand a Special General Meeting was never sent. The McDaniels were concerned about identifying themselves as the owners complaining about the smoke.
22. In March 2010, the Strata Corporation, in an attempt to find a resolution to the problem faced by the McDaniels, as well as a problem with marijuana smoke, decided to call a Special General Meeting to vote on a bylaw prohibiting the smoking of both tobacco and marijuana on the patios and balconies.
23. Prior to sending out the notice for the Special General Meeting, the Strata Council, based on research done by one of its members, concluded that the smoking of tobacco on patios and balconies could not be prohibited. As a result, the bylaw form presented to the owners referred only to the smoking of marijuana.

24. That bylaw was passed at a Special General Meeting, held on May 11, 2010 and subsequently registered in the Land Title Office. The McDaniels did not attend that meeting due to Mr. McDaniels being admitted to emergency due to a car accident arising from complications from his diabetes. (Ex 5, Tab 34)
25. On May 28, 2010, Mrs. McDaniel spoke to J.M. regarding renting their strata lot. (Ex 5, Tab 16)
26. On June 25, 2010, the McDaniels wrote to the Strata Corporation to request permission to rent their strata lot on the basis of hardship resulting from a combination of financial factors. (Ex 5, Tab 17)
27. On June 29, 2010, NAI responded to the McDaniels' request, advising that the Strata Corporation needed to see certain financial documents in order to verify that a hardship existed. The McDaniels did not pursue their request further. (Ex 5, Tab 18)
28. On July 9, 2010, the McDaniels wrote to T.S. the managing broker of NAI, advising that the Strata Corporation had failed to uphold its bylaws. The McDaniels subsequently received a telephone call from T.S., who advised that a bylaw amendment was their only option. (Ex 5, Tab 19)
29. In several of those communications, the McDaniels made reference to their medical conditions being affected by the smoke, the particulars of which are set out below:
 - (a) June 20, 2008 (email) – “we are expecting a child and smoking is obviously detrimental to a newborn’s health and I have severe allergic reactions to all types of smoke and perfumes”; (Ex 5, Tab 3)
 - (b) July 15, 2008 (letter) – “as we are expecting a child and I have extreme health issues in response to cigarette smoke and other strong scents, resulting in severe health problems and allergies”. (Ex 5, Tab 4)
 - (c) August 10, 2009 – “I, personally, have extreme allergies resulting in environmental sensitivities to perfumes and the smoke can lead to headaches, hives and anxiety attacks. My husband suffers from Type 1

diabetes and second-hand smoke increases his chance of heart disease and other problems.” (Ex 5, Tab 6); and

(d) June 25, 2010 (letter) – “we suffer from diabetes and extreme allergic reactions and sensitivity to smoke, trigger a range of problems”. (Ex 5, Tab 17)

30. The Strata Corporation did not request further medical information from the McDaniels.

31. In summary, in response to the Complainants’ communications, the Strata Corporation did the following:

- (a) Suggested that they buy an air conditioner;
- (b) Suggested that the Complainants attempt to obtain the support of at least 25% of the owners to demand that a resolution be placed before the owners at an Annual Special General Meeting to enact a ‘No Smoking Bylaw’;
- (c) Asked by notice, letters and communications at strata meetings that those residents who smoke, be respectful of those who are bothered by smoke;
- (d) Wrote letters to three owners below the McDaniels in August 2009, asking that they not smoke on their patio; and
- (e) Explored introducing an amendment to ban smoking on decks and patios.

32. Throughout these events, the Strata Council recognized the problems faced by the McDaniels, but was uncertain about what it could do to assist them. It sought to strike a balance between what the McDaniels wanted and what others in the building wanted.

33. The Bylaws of the Strata Corporation do not specifically prohibit smoking. However, Bylaw 3(1) provides that:

An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that

- a) Causes a nuisance or hazard to another person,
- b) Causes unreasonable noise,
- c) Unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
- d) Is illegal, or

- e) Is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by strata plan.

34. The Complainants moved from their strata lot on or about June 14, 2011, as the result of a foreclosure.

35. The Complainants' strata lot has been foreclosed against and due to that fact, they no longer reside nor intend to return to the Strata Corporation.

ANALYSIS OF THE EVIDENCE

[11] On the basis of the admissions of fact filed, the McDaniels' complaint of noxious, smoke infiltration into their residence commenced shortly after they purchased the premises in March 2008. It continued in varying degrees and with varying frequency until they vacated the premises in June 2011.

[12] The McDaniels say that as early as June 18, 2008, and beginning with Dr. Fay's note about Mr. McDaniel's therapy animal (Ex 5, Tab 2), they began to provide the Respondent with information of their physical disabilities.

[13] On June 20, 2008, Ms. McDaniel first informed the Respondent's agent that she was pregnant and that she suffers from severe allergic reactions to all types of smoke and perfumes. (Ex 5, Tab 3)

[14] On the basis of the jointly-filed documentary evidence, once summer had arrived, Ms. McDaniel experienced an intensification of smoke on a nightly basis due to the need to keep windows and doors open because of heat. On July 15, 2008, she reiterated that she was pregnant, suffered from severe allergies and that her health was being affected. Even at that relatively early stage, Ms. McDaniel provided information about the possibility of a non-smoking by-law or the enforcement of the general nuisance provision under the Strata Property Act. She also noted that even the installation of an "air conditioner" would not serve to resolve the hazard.

[15] The documentary record reflects no meaningful response by the Respondent which admits that, after Ms. McDaniel's letter of June 25, 2010, it requested no corroborating medical information.

[16] According to the documents, by July 2009, Ms. McDaniel had begun to maintain a "smoke fume log" ("log"), in which she says she recorded incidents of smoke infiltration and their impacts and which she submitted to the Respondent on July 17, 2009. (Ex 5, Tab 6)

[17] The log begins on July 16, 2009 and ends on May 23, 2011. It fastidiously documents at least one hundred and seventy-five incidents of smoke infiltration, often on multiple occasions daily.

[18] A sampling of entries includes:

- July 20, 2009, 9pm: Smoke entering my bedroom and living room cannot stand fumes in bedroom. Insomnia (keep needing to check at doors, windows). Tried using fans to blow out. Last for 10 minutes after smokers leave their patio #101. Never noticed in second bedroom or hall.
- July 21, 2009: We are out all day return in p.m. (Reluctant to come home, anxiety). Can't use all my rooms or sleep since fumes continue; 2:00 a.m. had to get up to close windows. This is getting very annoying! Sore throat, fussy baby... people still not calling to notify; 11:30 p.m. (same day) noticing skin rash on arms (hives) developing again.
- July 23, 2009: Evenings at home, beginning to be unbearable, skin rash, itchy, watery eyes. Very angry and anxiety from not enjoying summer due to continual need to close doors/windows. Need A/C on air purifier too.
- July 24, 2009: Feeling depressed/anxious about smokers and hazards of second hand smoke around baby.
- July 30, 2009: not sleeping at all - paranoid.
- Aug 1, 2009: noticed decrease in work performance; heat intolerable.
- Aug 2, 2009: Smell in (baby's) bedroom unbearable.

[19] The log stops temporarily on November 15, 2009, and resumes on March 24, 2010:

- July 6, 2010: Still not able to open windows. Hot weather; group smoke on patio 101, smoke smell inside; bad allergies.
- August 11, 2010: went to bed; had to close windows; sneezing and sore throat.
- May 29 – June 14, 2011: Relocated May 24, 2011. Foreclosure, surrendered keys.

[20] The evidence in this complaint deals largely with Ms. McDaniel's medical issues in relation to smoke. A second medical note dated "5/7/10", indicates that Mr. McDaniel suffers from "chronic health issues", rendering it important that he avoid exposure to second-hand smoke. (Ex 5, Tab 42) Mr. McDaniel's response to the situation was not a matter of particular emphasis in the evidence.

[21] It is unclear whether this was ever submitted to the Respondent.

[22] A lengthy medical report dated August 21, 2011, which, in my view, amounts to an essay on the ill-effects of second-hand smoke, confirms that Mr. McDaniel suffers from Type 1 diabetes and severe hypoglycemia, which places him at increased risk of diabetic complications from second-hand smoke, including heart disease and effects secondary to stress. (Ex 5, Tab 43)

[23] The McDaniels' chronology of complaints and loss of enjoyment of their property spans five months between April and August of 2008; five months from mid July until mid December of 2009; eight months ending in November 2010, and two months until they vacated in May 2011.

[24] Although the Respondent was aware of its powers with respect to the enactment of a Non-Smoking By-law as of 2009, it did not convene a Special General Meeting until March 2010, but then decided, on the basis of the anecdotal research of a council member, to only ban marijuana use. (Ex 5, Tab 34) Moreover, it never opted to enforce its Nuisance By-law 3(1) before the McDaniels were forced, by financial circumstances, to abandon their unit.

[25] The Respondent acknowledges that its efforts to resolve the situation were restricted to:

1. Suggesting the McDaniels bring in an air conditioner;
2. Suggesting the McDaniels attempt to muster the support of 25% of owners, required to trigger a Special General Meeting, to enact a Non-Smoking By-law;
3. Asking residents who smoke to be respectful of others;
4. Writing the three owners below the McDaniels not to smoke on their patios; and
5. Considering a smoking ban.

THE MCDANIELS' SUBMISSIONS ON REMEDIES

[26] The McDaniel's submit that during the entire three years they owned their condominium residence, they suffered continually and unnecessarily because of the conduct of other owners or tenants and because of the failure of the Respondent to enforce its by-laws. They say they experienced frustration, anxiety and helplessness and came to hate living in the complex, their first home; that the constant exposure to second-hand smoke detracted from their vision of a happy and healthy home.

[27] The McDaniels submit that, throughout, they diligently tried in every way to solve or settle their concerns and complaints, to no avail, before finally giving up.

[28] The McDaniels are at a loss to understand why their complaint, during their first year in their home, was not responded to. They feel their information respecting their health issues was dismissed and ignored, when matters should have been resolved at that stage.

[29] The McDaniels submit that they experienced three years of continuous stress, worry about their health, depression, and grief which affected their relationship, their family and their finances. When they tried to cope with their financial realities, they say they were denied the possibility to extricate themselves when their request to rent their unit was not accommodated. They believe that the rental income from their unit could have bought them time to relocate, secure lower-cost housing and preserve their ownership of the

property until it could be sold at a later time. This option was rendered unavailable by what they consider was an absurd and disproportionately intrusive request for highly personal, private information which they chose not to provide because of their lack of confidence in the Respondent's handling of it.

[30] At this point, the McDaniels say they wish to regain their dignity.

[31] The McDaniels say the Respondent should be "fined", which I interpret as their request for compensation or damages for injury to dignity, feelings and self-respect. They did not submit a specific amount under this head of compensation.

[32] The McDaniels also seek compensation in relation to itemized costs and expenses totalling \$1,118.88, which the Respondent does not dispute.

[33] The McDaniels also seek an order requiring the Respondent to enact a Non-Smoking By-law.

[34] The McDaniels acknowledge that the financial losses they incurred due to the foreclosure and loss of their property are not properly remedied in the context of this complaint.

THE RESPONDENT'S SUBMISSIONS ON REMEDIES

[35] The Respondent concedes that it failed to accommodate the McDaniels.

[36] The Respondents submits that because the McDaniels did not couch their submission as compensation for injury to dignity, feelings and self-respect, no such remedy should be ordered: *Mahoney obo Holowaychuk v. The Owners, Strata Plan No. NW332 and others*, 2008 BCHRT 274, para. 128.

[37] The Respondent does not oppose the McDaniels' claim for expenses.

[38] The Respondent submits that the Tribunal does not have the jurisdiction to impose a "fine" under s. 37 of the *Code*. The Respondent says that if this submission is interpreted

as a request for compensation for injury to dignity, feelings and self-respect, it should not be granted.

[39] In the alternative, the Respondent says that if the Tribunal decides to award compensation, it should consider that:

1. The Respondent tried to assist the McDaniels within the confines of what it thought possible; it did not dismiss their concerns outright. It tried to achieve the greatest good for the greatest number;
2. The Respondent has been willing to concede it breached its duty to reasonably accommodate the McDaniels;
3. The medical evidence of any ill effects suffered by the McDaniels as a result of second-hand smoke is limited, and their log is non-specific; and
4. The McDaniels only had problems with second-hand smoke during two or three summer months per year.

[40] Therefore, the Respondent submits that any award under s. 37(2) should be moderate, in the range of \$2,500.00, because the Respondent was not aggressive toward the McDaniels.

[41] Regarding the matter of a Non-Smoking By-law, the Respondent says this is both unnecessary and beyond the Tribunal's authority under s. 37. The Respondent submits the enactment of a Non-Smoking By-law is unnecessary because:

1. The McDaniels no longer reside at, and do not intent to return to, the complex;
2. It would impose on the remaining residents a regime they have not had the opportunity to consider and may not want and would bypass or nullify their rights to vote on the matter; and
3. The Respondent already has Nuisance Bylaw 3(1) which can be used to address the issue of smoke.

[42] The Respondent submits that it should be left to it and its owners to determine how best to accommodate future residents.

ANALYSIS: SECTION 37(2) REMEDIES

[43] The McDaniels seek the imposition of a fine against the Respondent which they make clear should be awarded to them.

[44] I have already indicated that I consider this aspect of the McDaniels' submissions as a request for compensation under s. 37(2)(d)(iii). They simply do not specify the amount of their request. Considering its alternative submission, the Respondent, in my view, acknowledges this alternative interpretation and focuses its arguments on the issue of quantum. The Tribunal has, even absent specifics, ordered compensation for injury to dignity on the basis that this is inherent in any violation of the *Code: Hussey v. B.C. (Minister of Public Safety and Solicitor General)*, 2003 BCHRT 76.

[45] Regarding the Respondent's withholding of its approval to permit them to rent their property, I take into consideration that it was the McDaniels who chose not to pursue the issue after an initial rejection and on receiving what they experienced as a highly-intrusive request for confidential, personal information.

[46] The McDaniels say that the nature and scope of the information request was, on its face, illegal. There is no evidence to that effect before me nor is the issue of the legality of the Respondent's by-laws on the rental issue, a matter to be determined by the Tribunal. I do not make any award of compensation in respect of this issue.

[47] The McDaniels owned and occupied their property for over three years. I find that, for more than half of the period of their ownership of the premises, they were subjected to second-hand smoke to a degree they found beyond unacceptable and debilitating. During periods of increased smoke infiltration, their health risks and stress levels escalated.

[48] Though aware of the McDaniels' sensitivities and vulnerabilities, the Respondent never marshalled a meaningful, effective response. In my view, based on the materials filed, the Respondents' conduct, while not overtly aggressive or confrontive, was indecisive and minimizing of the McDaniels' distress to the point that they came to hate their home. The Tribunal has said, and I accept that from any personal, social, emotional or developmental perspective, a home is central to a person's security and sense of self:

James obo James v. Silver Park Campsite and another (No. 3), 2012 BCHRT 141, paras. 39-40.

[49] Although the infiltration of second-hand smoke abated and perhaps even remitted entirely during the shoulder and winter seasons, which would certainly reduce the McDaniels' physical discomfort, those periods of temporary respite did not, in my view, eliminate the anticipatory dread, apprehension, hyper-vigilance, anxiety, and stress they would have experienced as spring and summer approached.

[50] Injury to dignity awards are based on the evidence presented and on an assessment of the relevant circumstances of the case. They are compensatory, not punitive and consider, among other factors, the nature of the conduct complained of, the aggressiveness of the conduct, its duration and frequency, the vulnerability of the victim(s) and the impact on their vulnerabilities or disabilities.

[51] I accept the McDaniels were physically and psychologically vulnerable. Knowing this, the Respondent failed to seek or inquire into more fulsome information with respect to the extent of their physical vulnerabilities and responded with what can best be termed a patronizing or benign neglect, for a period of almost three years. I consider this a significant period. During that time, the McDaniels were persistent and consistent in utilizing an impressive array of strategies to give voice to their concerns.

[52] The Respondent's characterization of the medical evidence as "scant" notwithstanding, I accept that the Respondent's conduct severely diminished the McDaniels' enjoyment of the property and had a physical as well as significant emotional impact on them.

CONCLUSION: REMEDIAL ORDERS

[53] Pursuant to s. 37(2)(a) of the *Code*, and although the McDaniels no longer reside in the complex, I order that the Respondent cease its discrimination and refrain from committing a similar contravention in the future.

[54] With respect to the McDaniels' submissions that the Tribunal order the Respondent to enact a No-Smoking By-law under s. 37(2)(c)(i), I accept the Respondent's arguments outlined above and decline to do so. I consider my order, under s. 37(2)(a) above, an adequate response in the circumstances. The McDaniels' requested remedy in this respect would, in my view, add little: *Konieczna*.

[55] Under s. 37(2)(d)(ii), and as it is not opposed by the Respondent, I order it to compensate the McDaniels in respect of expenses incurred in the context of this complaint consisting of an air conditioner and naturopathic consultations, amounting to \$1,118.88. To this amount I add the sum of \$400.00 in respect of their travel and accommodation expenses in connection with their attendance at hearing. My total award under s. 37(2)(d)(ii) is \$1,518.88.

[56] Under s. 37(2)(d)(iii), on the basis of my foregoing discussion and taking into account all the relevant circumstances, including that this complaint is brought by two individual complainants who were individually impacted, I exercise my discretion to order the Respondent to pay Mr. McDaniel the sum of \$2,000.00 and to Ms. McDaniel the sum of \$4,500.00 as compensation for injury to their dignity, feelings and self-respect, together with post judgement interest.

[57] I thank Ms. McDaniel and counsel for the Respondent for their respectful and thorough submissions in this matter.

Bernd Walter, Chair