



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**B E T W E E N:**

**Alex Robinson**

**Applicant**

**-and-**

**York Condominium Corporation No. 365  
and A.A. Property Management & Associates Inc.**

**Respondents**

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## DECISION

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**Adjudicator:** Mark Hart

**Date:** July 18, 2014

**File Number:** 2013-14758-I

**Citation:** 2014 HRTO 1059

**Indexed as:** Robinson v. York Condominium Corporation No. 365

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## APPEARANCES

Alex Robinson, Applicant	)	Jean-Alexandre De Bousquet,
	)	Counsel
	)	
	)	
York Condominium Corporation	)	Ashley Winberg, Counsel
No. 365, Respondent	)	
	)	
	)	
A.A. Property Management	)	Edmond Prifti, Representative
& Associates Inc., Respondent	)	
	)	
	)	

## INTRODUCTION

[1] This is an Application filed June 20, 2013 and completed July 2, 2013, alleging discrimination with respect to housing accommodation because of disability contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”).

[2] The applicant states that she has electro-magnetic frequency sensitivity (“EMS”) which has been adversely impacted by the implementation of a new security system at her condominium complex and that her needs have not been appropriately accommodated by the respondents.

[3] The respondent York Condominium Corporation No. 365 (“YCC 365”) is a not-for-profit condominium corporation which operates three buildings as part of a condominium complex at 4060-4062-4064 Lawrence Avenue East in Toronto. The applicant has resided in the building at 4060 Lawrence Avenue East since November 2007.

[4] The respondent A.A. Property Management & Associates Inc. (“A.A. Property Management”) is a property management company that was contracted by YCC 365 to manage the condominium complex. The property management contract with A.A. Property Management was terminated by YCC 365 effective December 31, 2013.

[5] At a conference call held on April 9, 2014, the applicant agreed to withdraw her Application as against the new security company, Executive Protection Services Group Inc. (“EPS”), on the basis that YCC 365 agreed to accept liability for any actions by EPS employees that may be found to have been in violation of the *Code*.

[6] On this conference call, I also separated the hearing into distinct phases. The first phase of the hearing was to determine whether the applicant was able to establish a *prima facie* violation of the *Code*, including consideration of the following issues: the nature of the applicant’s disability; what needs arise from the applicant’s disability; whether the applicant’s disability-related needs were being infringed by the security

system being used by YCC 365; if so, whether the applicant's needs are capable of being accommodated by YCC 365 and, if so, how; and whether the applicant fulfilled her obligation to cooperate in the accommodation process. If the applicant established a *prima facie* violation of the *Code*, further phases of the hearing would consider the undue hardship defence and the applicant's remedial requests.

[7] The hearing of the first phase in this matter was held on April 14, 15 and 22, 2014. In order to accommodate the applicant's needs, the hearing was held in a conference room in the condominium complex at 4062 Lawrence Avenue East. During the course of the hearing, I heard from the following witnesses for the applicant: the applicant herself; Christopher Dundas-Robinson, the applicant's son; Nathalie Robinson, the applicant's mother; Katherine Vasiliou, another YCC 365 resident and current Board President; Jim Van Loosen, a home inspector; and Dr. Curtis Handford, the applicant's family physician. For the respondents, I heard from: Katrina Bellerive, the current property manager; Fred Walker, President of EPS, the current security provider; and Gabriel Wu, who oversaw the installation of a new security camera system.

## **REVIEW OF EVIDENCE**

### **The nature of the applicant's medical condition**

[8] In the words of the applicant's family physician, Dr. Handford, the applicant has a very complex medical condition that is extremely disabling.

[9] Dr. Handford began treating the applicant in 2004. Dr. Handford testified that at that time and over the ensuing years, the applicant was experiencing mostly motor symptoms, including intermittent weakness of her lower limbs resulting in falls and her legs giving way, intermittent difficulty with speaking known as dysarthria, and intermittent tonic posturing, which involved muscular rigidity and was almost like a spasm. The applicant was referred to neurologists, and in the absence of any organic findings to explain these symptoms, was diagnosed with a form of conversion disorder,

which is a psychological condition usually brought on by some kind of stress inducing a physiological response.

[10] In October 2007, the applicant was seen by Dr. Molot at the Environmental Health Clinic at Women's College Hospital and was diagnosed with electro-magnetic frequency sensitivity ("EMS"). In his report, Dr. Molot states that, while neurological symptoms in the absence of any abnormal tests done by neurologists can imply a conversion disorder, psychiatric evaluation of the applicant seemed to have ruled that out. Dr. Handford took issue with this latter statement. While acknowledging that a psychiatric evaluation of the applicant dated January 2, 2007 had not diagnosed conversion disorder, Dr. Handford notes that the evaluation did not specifically rule out or even discuss this diagnosis.

[11] Dr. Handford's evidence is that conversion disorder and EMS are the two leading diagnostic probabilities, but he was unable in his testimony to provide a clear or definitive response as to which of these diagnoses explains the applicant's symptoms. Dr. Handford's best evidence is that the applicant's symptoms are multi-factorial in nature, and that EMS and other factors may be playing a role in causing these symptoms. Dr. Handford testified that there is not enough medical evidence to make either conversion disorder or EMS an exclusive diagnosis, although he agreed that the applicant's symptoms could very well be explained by EMS.

[12] The medical evidence is very clear in finding that there is no evidence of malingering or fictitious aspects of the applicant's presentation, in that she genuinely experiences the physiological symptoms that she is reporting. That is consistent with my assessment of the applicant during the course of the hearing, namely that she has genuinely experienced the symptoms she testified to in her evidence and is sincere in her belief that these symptoms are attributable to the new security system installed at YCC 365.

[13] YCC 365 counsel submitted that, if the applicant suffers from EMS, then the triggering sources for her symptoms are limited to devices that emit radio frequency

signals, such as cellphones, Wi-Fi and other wireless devices, and that her symptoms are not caused by electro-magnetic radiation. Certainly from the material before me, cellphones and Wi-Fi have been a consistent source of the applicant's complaints, and there is evidence in the medical documentation of the applicant having adverse reactions to cellphones while attending for medical appointments. However, I have not seen any clear evidence in the medical documentation that restricts her EMS just to a reaction to radio frequency signals. Indeed, the applicant previously had raised a concern about the fluorescent light outside her apartment door, which was disconnected by YCC 365, and a fluorescent light does not emit a radio frequency signal. Further, Dr. Handford testified about a recent experience during an appointment where the applicant appeared to have a reaction to the operation of a printer, which also does not emit a radio frequency signal. Moreover, Dr. Handford in his evidence did not restrict the applicant's EMS to only responding to radio frequency signals, and in fact made reference to her response to electronic equipment. As a result, I am not prepared to conclude that the applicant's EMS is only triggered by radio frequency signals, and not also by electro-magnetic radiation.

[14] On the basis of my consideration of all of the medical evidence before me, I am prepared to accept for the purpose of this decision that EMS is at least one factor contributing to the applicant's medical condition and the symptoms she experiences, and I further find that EMS is a "disability" within the meaning and protection of the *Code*.

### **Changes to the YCC 365 security system**

[15] YCC 365 entered into a contract with a new security company, EPS, on February 10, 2013. The previous security company had been engaged to provide security overnight on the weekends. EPS was engaged to provide full 24-hour security coverage on the weekends as well as security coverage from 3:30 p.m. until 7:00 a.m. each day during the week, which is stated by YCC 365 to be for the purpose of addressing vandalism, parking, and entrance to the property due to previous incidents.

[16] When EPS took over the security contract, there were two spaces in the condominium complex being used by security: there was a security office located next to the lobby in the building at 4060 Lawrence Avenue East and adjacent to the entrance driveway (the “security office”); and there was a small office down the hall to the west of the security office (the “security closet”). The security closet is located right across the hall from the first floor entrance to the applicant’s unit.

[17] Prior to the engagement of EPS, the security closet housed two digital video recorders (“DVRs”), a computer monitor and a signal amplifier for the purpose of storing and viewing footage from security cameras positioned at various locations throughout the condominium complex. Cabling was run from the security cameras into the security closet for this purpose. This situation had existed for several years. Prior to the arrival of EPS, the applicant’s evidence is that she had no issues or problems related to the presence of this cabling and equipment in the security closet and had noticed no impact on her EMS. Her evidence is that the security closet was accessed infrequently by staff with the previous security company.

[18] Initially with the arrival of EPS, no changes were made to the existing equipment in the security closet. EPS did put a sign on the outside of the door to the security closet indicating that this was a security area. EPS staff also initially used the security closet as a location for staff to re-charge their cellphones. EPS security staff carry cellphones with them while patrolling the premises, and use them for the purpose of checking in with the security monitoring station every two hours and with any other security staff who are on duty at the same time. The applicant’s evidence is that EPS security staff accessed the security closet much more frequently during this initial period.

[19] In addition, at some point early in its contract with YCC 365, EPS installed a “security wand” system in order to monitor security staff patrols of the complex. This system consists of “buttons” which were placed primarily in the stairwells on each floor of the three buildings in the complex. When security staff are on patrol, they carry a wand with them which they present to the button as they pass each checkpoint. The wand takes a reading from the button, which is then stored in the wand and later

downloaded at the end of each shift into a computer file when the wand is inserted into its base unit. The system is described as a “stand alone” system, and no wiring needed to be installed for the buttons. Documentation before me indicates that no wireless frequency is emitted from this system. The base units for the wands are located in YCC 365’s management office, which is in a separate building from where the applicant resides. Security staff carry the wands with them while on patrol, and leave the wands in the security office if the management office is not open at the end of their shift.

[20] Sometime in March 2013, Fred Walker, the President of EPS, became aware that the applicant was concerned about security staff charging their cellphones in the security closet and about the amount of traffic in and out of the security closet. As a result, the cellphone charger was moved at this time to the security office. In April 2013, EPS also purchased a new monitor to view the security footage, which replaced the old monitor in the security closet. No new wiring was required for the new monitor, which was installed using the existing wires already in the security closet. In addition, in April or May 2013, in order to alleviate the need to go into the security closet to check the security camera footage, EPS installed a data cable that ran from the security closet through the hallway ceiling and then into the security office.

[21] In June 2013, EPS purchased and installed a new DVR in the security closet, to replace the two old DVRs previously in use. Once again, no new wiring was required for the new DVR and it was connected to the system using existing wiring already in place. At this time, a new data cable was installed, once again from the security closet through the hallway ceiling and into the security room, so that footage from the security cameras stored on the new DVR could be viewed by staff in the security office.

[22] Mr. Walker confirmed in his evidence that there are no wireless systems in the security closet or security office, and that none of the security equipment is internet-based. He states that while some of the equipment may have Wi-Fi and internet capabilities, these capabilities are not operational and have been disabled.



[23] Sometime between April and June 2013, EPS installed new security cameras in the YCC 365 management office and inside the entrance to the parking garage. The cabling for these new security cameras was run underground and directly into the security office. EPS also replaced a few of the existing security cameras on the premises of the condominium complex, including the entrance door camera for the applicant's building. Neither the new cameras nor the replacement cameras are wireless or internet-based, but rather were hard-wired directly into the existing security system.

[24] Mr. Walker testified that, apart from the above, no other changes were made to the YCC 365 security system by EPS.

[25] I also heard evidence from Gabriel Wu, who is a General Manager with a company called Smart Vision Direct ("SVD"). After engaging in discussions with YCC 365, SVD was engaged in July 2013 to enhance security at the condominium complex by installing new security cameras throughout the premises. The work undertaken by SVD was completed in three phases. The first phase involved the installation of new security cameras in the building at 4064 Lawrence Avenue East, which was completed in late August 2013. The second phase involved the installation of new cameras in the building at 4060 Lawrence Avenue East, where the applicant resides. This work was undertaken from mid-September to October 2013. The third and final phase of the work involved the installation of new cameras at 4062 Lawrence Avenue East, where the YCC management office is located. This work was started in late November 2013 and completed in January 2014.

[26] Mr. Wu testified that SVD installed a hard-wired security camera system with no Wi-Fi or internet capability. New security cameras were installed on each residential floor of the three buildings in such a manner that all areas of the common hallways were visible. For example, on the first floor of the applicant's building, Mr. Wu states that six new security cameras were installed to cover all sections of the hallways. The cameras are connected by a CAD-5 cable to an intermediate switch located in the electrical room or rooms on each floor, with the wiring for each camera connected to the nearest

intermediate switch. The intermediate switches are then connected through the electrical rooms to a main switch, and then cabling connects the main switch to a bank of NVRs in the security office where camera footage is stored and can be viewed.

[27] The cabling from the security cameras to the intermediate switches carries both data and power, which is a standard 48 volts. The intermediate and main switches all draw power from the electrical rooms in which they are located, which generally are at the corner of the hallways on each floor. The cabling between the intermediate switches and connecting to the main switches is CAD-5 or CAD-6 and only carries data. For the building at 4060 Lawrence Avenue East, where the applicant resides, the cabling on the east side of the building runs straight down to the main switch in the electrical room on the first floor, while the cabling on the west side of the building runs down to the first floor and then through the hallway ceiling to the main switch in the electrical room at the corner of the hallway on the east side of the building. From there, another cable runs through the ceiling and across the hall into the security office, where it connects with the bank of personal video recorders, essentially a form of DVR ("PVRs"). There is a similar configuration in the other two buildings, except that the cabling from the main switch in each of those buildings runs to an underground lock box where there is another switch, and then one data cable runs from that underground switch directly into the security office. Mr. Wu testified that for the data cabling, the voltage would be less than 5 volts.

[28] In the security office, there are five PVRs which receive and store the data from the security cameras installed by SVD. Mr. Wu testified that SVD installed a low voltage system, so that each PVR runs on 19 volts. The system also includes a computer to which the PVRs are connected, which runs on 110 volts. Originally, the PVRs and computer were spread out on desks in the security office, and then in February 2014 they were placed in a steel and glass cabinet. Monitors to view the security camera footage are connected to the computer and located in the security office.

[29] SVD also installed covert cameras in the disposal rooms on each floor, which are connected to an intermediate switch in the same way as the hallway cameras, and some new cameras in the building basements. In addition, starting in August 2013, SVD

also was involved in replacing some of the existing cameras at various locations in the condominium complex, mostly in lobbies, elevators or the underground parking garage.

[30] None of the cameras installed by SVD have Wi-Fi or internet capability, and were specifically chosen for that reason. The switches, PVRs and computer also do not have any Wi-Fi or internet capability. Mr. Wu confirmed in this evidence that neither the cameras nor the switches send off any Wi-Fi or wireless signal.

### **The applicant's requests for accommodation**

[31] On March 14, 2013, the applicant wrote to YCC 365 management to raise a concern about the increased security presence with the arrival of EPS and increased symptoms associated with her EMS. In this letter, the applicant states that ever since the EPS security staff started working the increased security shifts, her misery had "increased exponentially". She states that she had been informed that the security guards were charging their cellphones in the security closet, although she expressed her belief that they were doing more than this "because the excruciating pain begins when they come on site and subsides when they leave". She states that she had installed shielding material in her unit to try to mitigate her suffering at her own expense. The applicant requested that the security closet be moved to a new location.

[32] YCC 365 responded through counsel by letter dated April 18, 2013. Counsel stated that while YCC 365 had been advised that the applicant suffers from EMS, it had not received medical confirmation of this diagnosis. Counsel also stated that the room across from the applicant's unit had always been used by security, including at the time the applicant decided to purchase her unit. Counsel asserted that the cost of relocating the security closet would result in undue hardship, given the financial condition of YCC 365. However, counsel noted that YCC 365 had taken some steps to reduce the use of electronics in the security closet, including having security staff charge their cellphones at the front of the building in the security office.

[33] On April 22, 2013, the applicant's family doctor, Dr. Handford, wrote a letter to YCC 365 and AA Property Management stating that the applicant has a very complex medical condition that is extremely disabling. He stated that he understands that there is some electronic equipment in the suite across the hall from the applicant's unit, and that the presence of this equipment appears to have exacerbated the symptoms of the applicant's medical condition.

[34] On May 23, 2013, new counsel for YCC 365 wrote to Dr. Handford to state that YCC 365 needed to better understand the nature of the problem he had described. Counsel made it clear that YCC 365 was not seeking any personal or confidential medical information, but needed to understand what, if any, accommodation the applicant required to better manage her medical condition. Specifically, counsel asked: What electronic equipment does Dr. Handford say has exacerbated the applicant's medical condition? What measures did he recommend YCC 365 take in the circumstances? And what actions did he suggest the applicant take so that her medical symptoms are not aggravated?

[35] Dr. Handford called the applicant on May 27, 2013, to discuss a response to counsel's letter. In his record of this discussion, the applicant stated that she was requesting that the extra security equipment be moved to an empty room further down the hall, that cellphone use be decreased and landlines used instead, and that wireless equipment be made wired.

[36] Dr. Handford initially prepared a draft response to counsel's letter for discussion with the applicant on July 2, 2013. In this draft letter, Dr. Handford stated that the applicant had noticed that her symptoms had worsened since the security office was placed across the hall from her unit, and that she was requesting that the office be moved further down the hall or that cellphone use and wireless equipment be replaced by landlines.

[37] Dr. Handford testified that he was uncomfortable sending this draft letter for two reasons. First, he was uncomfortable responding to a letter from legal counsel. Second,

and more significantly, he felt uncomfortable responding to a letter in which he was being asked to make specific recommendations about electronic equipment, which he felt was beyond his area of expertise. As a result, Dr. Handford had a discussion with the applicant on July 8, 2013, during which it was agreed that Dr. Handford's response would be put on hold until the applicant's next appointment. The applicant had an appointment with Dr. Handford on July 24, 2013, during which she is recorded as advising Dr. Handford that her lawyer had told her that the YCC 365 lawyer should not have written him a letter, and that she wanted Dr. Handford to write a letter stating that he was not in a position to provide YCC 365 with the information they had requested.

[38] As a result, Dr. Handford sent a letter to then counsel for YCC 365 on July 26, 2013, stating that he was not presently in a position to provide responses to their questions, and to ask that their questions be re-directed to the applicant.

[39] By this time, the applicant had filed and completed her Application to this Tribunal. In her Application, the applicant requests that all security technology be wired and that the security office and equipment be relocated to another building.

[40] The Application was served on the respondents by the Tribunal by letter dated July 10, 2013. The respondents filed their Response on August 14, 2013. In their Response, YCC 365 took the position that despite its clear request, Dr. Handford was unable to provide any objective medical findings regarding the cause of any medical issues that the applicant may have, nor did Dr. Handford prescribe any potential actions or accommodation that could be pursued by the parties. YCC 365 also confirmed that none of the surveillance equipment utilized by security is wireless or Wi-Fi and that there is no satellite system, and took the position that relocating the security office would cause undue hardship given the cost and YCC 365's financial condition.

[41] As neither party had agreed to mediation, this matter was scheduled for a hearing by Notice of Hearing dated October 4, 2013, with the hearing scheduled to take place in mid-April 2014.

[42] A new Board of Directors was elected by the residents of YCC 365 effective September 5, 2013. A resident who had advocated on the applicant's behalf was elected President of the Board. AA Property Management was replaced by a new property manager as of the end of December 2013.

[43] The applicant acknowledged in her evidence that further discussions about potential accommodations took place in December 2013 in the context of the new Board of Directors, although no solution was found.

### **Evidence regarding the applicant's symptoms**

[44] The applicant states that prior to March 2013, she was able to engage in a variety of household activities. She states that she did all her own cooking and laundry, and was able to clean her home and backyard. She states that she was able to leave her unit to ride her bike, do some grocery shopping, deliver flyers to building residents, go to the gym or go walking with her walker. She described herself as having led a relatively active life.

[45] She states that these activities stopped exactly in the middle of March 2013, and she became completely unable to do things from March 2013 onwards. She states that she has had to go down to the basement to sleep in her locker, she spends 22 hours per day under foil, she has been collapsing in her home, and she could no longer use her walker and had to start using a wheelchair, which she had not required in the previous seven years. She states that she requires her son's help to bathe, and became suicidal. She states that she could no longer go up her stairs to her bedroom or washroom, and has had to use a commode. She states that she sometimes experiences convulsions or brain seizures where she would black out. She states that she can no longer go outside without assistance and is required to wear a foil suit when she does so.

[46] The applicant testified that during this period of time, she felt that the electromagnetic fields kept increasing. She testified that she would tell her neighbours

that she would feel changes happening on a particular day, and her neighbours would later confirm that she was right and that work was being done that day.

[47] The applicant states that it was a gradual process of decline, with her deterioration occurring through April and May and reaching its worst in July and August 2013.

[48] The applicant testified that the symptoms she has experienced cannot be attributed to anything else other than the new security system. She states that she has been living in her condominium complex for six years and only began experiencing this degree of exacerbation of her symptoms when the new security system was implemented. As a result, she states that she came to the conclusion that without any doubt it is the new security system that is causing her difficulties.

[49] There is evidence before me indicating that as of March 31, 2014, there were two Wi-Fi networks accessible immediately outside the applicant's first floor entrance, four Wi-Fi networks on the second floor to the east of the applicant's unit and five Wi-Fi networks to the west. None of these Wi-Fi networks is associated with the new security system, but appear to belong to other residents in the applicant's building. The applicant testified that her neighbours had Wi-Fi systems prior to March 2013 and that these systems did bother her. She states that Wi-Fi will make her weak and give her headaches, but she can still break the field and get about as she wants to. She states that Wi-Fi does not create the symptoms she is experiencing, with her activities being reduced to the extent they have and her symptoms constantly being aggravated. She states that Wi-Fi from her neighbours never prevented her from walking and required her to use a wheelchair or caused her to need to use a commode.

[50] On cross-examination, the applicant testified that even after the cellphone charger was permanently removed from the security closet sometime in March or April 2013, her symptoms did not improve, which she attributes to the continued installation of the new security system. She also states that security staff were constantly in the security closet with their cellphones, so there was no real change.

[51] On March 20, 2013, the applicant had an appointment with her family doctor. His records indicate that at that time, the applicant reported having walking problems since new security equipment was installed across the hall about one month earlier, that she is staying in her home and had not left her apartment in two months, that she was covered in aluminum foil, that she was sleeping in her locker, that she had been experiencing constant tightness in her chest since the installation of new security equipment, and that she had had to give up her paper route which she had been doing since 2009. Dr. Handford described the applicant as being dysarthric (which means having impaired articulatory ability) throughout her appointment, which he notes was new for her, and he notes that she was tearful.

[52] Dr. Handford next saw the applicant on July 24, 2013, at which time he noted that the applicant was under foil 20 hours per day, was using a commode, was trying to exercise but could not do so as a result of fatigue due to radiation, could not leave her home on her own but required the use of a wheelchair, and had suicidal thoughts on one occasion.

[53] On December 20, 2013, the applicant reported to Dr. Handford that the building may have moved some of the equipment, as she was experiencing less disability at home and was able to sleep upstairs in her unit again. When asked about this on cross-examination, the applicant stated that this was around the time that she had further discussions with the new Board President and new legal counsel about some changes potentially being made. She testified that she felt that something had to have been done, because she experienced a lessening of her symptoms. In fact, there is no evidence before me to indicate any specific changes were made in or around that time. There is some evidence that security staff may have been asked during this period of time to stop using their wands when in the applicant's building, but I have records in evidence before me that indicate that the security wands were used in the applicant's building at least on December 18 and 19, 2013.

[54] I heard evidence from the applicant's son, mother and the current Board President that was substantially consistent with the applicant's evidence. The



applicant's son related an incident that he believes occurred sometime in April or May 2013, when he asked security staff on duty to turn off their cellphones. The cellphones had been transferred to the security office by this time. The applicant's son testified that by the time he walked back down the hallway to the apartment, his mother was standing up and walking and seemed a bit more relieved and was feeling a lot less distressed. He states that while the applicant knew that he was going down to talk to security staff, she did not know that he was going to ask them to turn off their cellphones. He states that he knew that the security staff would need to turn their cellphones back on to do their job, so he had his mother sit down again and he went back to the security office and the cellphones were turned back on. He states that by the time he got back home, the applicant was no longer able to stand.

### **Evidence of Mr. Van Loosen**

[55] I heard evidence from Jim Van Loosen, who is a certified master home inspector. Prior to the hearing, Mr. Van Loosen had attended to conduct testing at the applicant's home on November 26, 2013, and again on March 25, 2014. In addition, on the first day of hearing on April 14, 2014, the parties and I accompanied Mr. Van Loosen while he did further testing in the security closet, the security office, the hallway outside the applicant's unit, and in the applicant's unit itself.

[56] Mr. Van Loosen provides services which include electro-magnetic field testing using a device called a TES 1394 Triaxial ELF Magnetic Field Meter. The specifications for this device indicate that it is designed to determine the magnitude of magnetic field radiation generated by power lines, computers, monitors, TV sets, video machinery and many other similar devices. Mr. Van Loosen acknowledged in his evidence that this device does not measure radio frequency fields, such as those generated by Wi-Fi devices, cellphones, or other wireless technology.

[57] The device measures electro-magnetic fields in milligauss (mG) units, and can measure maximum or minimum readings. Mr. Van Loosen testified that the device is intended to be used when held at waist level.

[58] Mr. Van Loosen acknowledged that the readings taken using this device can be highly variable depending upon environmental conditions, what equipment may or may not be turned on at the time testing is conducted, and a variety of other factors. This high degree of variability is exemplified by the readings recorded by Mr. Van Loosen at the same location over the three different days of testing. For example, Mr. Van Loosen's readings for the centre of the applicant's living room varied from 14.6 mG on November 26, 2013, to 31.1 mG on March 25, 2014, to 6.51 to 7.15 mG on April 14, 2014. Given this high degree of variability, it is not clear to me that much can be taken from any particular individual measurement for any specific location at any specific time.

[59] Of perhaps some utility to this proceeding are Mr. Van Loosen's readings relative to each other. For example, when taking readings in the security closet on April 14, 2014, the maximum reading was 3.44 mG at the window which increased to 7.17 mG at the security closet door. When Mr. Van Loosen stood at the side wall of the security closet and walked toward the equipment in that room, there was no change in the maximum reading of 4.94 mG.

[60] In the first floor hallway outside the security closet and the applicant's unit, the maximum reading was 10.7 mG on April 14, 2014. As Mr. Van Loosen walked to the west of the security closet, the hallway reading increased to 12 mG under the fluorescent light and then decreased to 2 mG past the bend in the hallway. To the east, the reading lowered to 5.0 mG and down and was 3.3 mG by the elevator. When Mr. Van Loosen had conducted this testing on March 25, 2014, the reading in the hallway outside the security closet door was 12.83 mG. When he moved 12 feet beyond the security closet door to either side, the reading decreased to 1.3 mG.

[61] In the second floor hallway outside the door to the applicant's unit (which is directly above where the first floor hallway measurement was taken), the maximum reading on April 14, 2014 was 5.0 mG. On March 25, 2014, the reading was 19.7 mG outside the applicant's second floor entrance, again decreasing to 1.3 mG 12 feet from this area.

[62] Based on Mr. Van Loosen's readings and his evidence, I draw the following conclusions. First, Mr. Van Loosen confirmed that there were higher electro-magnetic radiation readings associated with the area around the security closet door. Second, he confirmed that these higher readings are not associated with any of the equipment in the security closet, including the DVRs, monitor or computer system or the wiring that connects this equipment. Third, his readings decreased significantly as he moved down the hallway to either side of the security closet door.

## **ANALYSIS AND DECISION**

[63] This case involves an allegation of discrimination because of disability which is alleged to have been created by the installation of a new security system by the respondent YCC 365. In order to be successful with her Application, the applicant must be able to point to objective evidence to establish on a balance of probabilities that some element of the new security system is responsible for the symptoms she is experiencing.

[64] Having heard the evidence, it seems to me that the new security system can be broken down into four separate components: (1) the use of cellphones and the cellphone charger; (2) the data cables to connect the DVRs in the security closet to the security office; (3) the wand system; and (4) the new cameras installed by SVD.

[65] The evidence regarding these changes to the security system at the condominium complex needs to be assessed in light of the fact that the security system that pre-existed the engagement of EPS and SVD did not cause any issues or concerns for the applicant. In addition, apart from previous issues with her neighbour's Wi-Fi, any radio frequency signals or electro-magnetic radiation that pre-dated the engagement of EPS and SVD also did not cause issues or concerns for the applicant. In this context, in my view, the mere replacement of existing security cameras with no wireless capability by either EPS or SVD cannot be identified as the cause of the applicant's symptoms.

[66] With regard to the cellphones and the cellphone charger, the evidence indicates that at least initially the security staff were charging their phones in the security closet across from the applicant's unit. This was raised by the applicant in her e-mail to YCC 365 of March 14, 2013. As a result, shortly thereafter, the cellphone charger was moved from the security closet to the security office. The question for me to determine is whether, on a balance of probabilities, there is objective evidence before me to establish that the current location of the cellphone charger is a contributing cause of the applicant's symptoms.

[67] I appreciate the evidence before me that, sometime in April or May 2013 after the cellphone charger was moved to the security office, the applicant's son asked security staff to turn the charger off and the applicant experienced some temporary diminution of her symptoms. However, I note that, while the applicant may not have been aware that her son was going to ask that the cellphone charger be turned off, she did have prior awareness that he was going to speak to security staff and also was aware that he was returning to the security office to tell them to turn the charger back on. As a result, it is not clear to me how much weight I can put on the applicant's subjective experience that her symptoms were temporarily alleviated.

[68] Of greater concern to me is the objective evidence of Mr. Van Loosen that his measurements of electro-magnetic radiation actually decreased as he moved down the hallway from the applicant's unit towards the security office. If electro-magnetic radiation from the cellphone charger was a cause of the applicant's symptoms, one would expect that these measurements would increase as one approached the alleged source of the problem, rather than decrease significantly. On the basis of the objective evidence before me, I find that I do not have a sufficient basis to support a conclusion that the cellphone charger is emitting electro-magnetic radiation that is a contributing cause of the applicant's symptoms.

[69] I am cognizant of the fact that at least the cellphones when placed in the cellphone charger may also be emitting a radio frequency signal or field. However, there is no objective evidence before me to indicate the strength of any such signal or field in

relation to the applicant's unit or to assist in pinpointing the source of any such field. In this regard, I note Mr. Van Loosen's acknowledgement that his device does not measure radio frequency signals or fields. I also note the substantial presence of Wi-Fi networks that are in operation around the applicant's unit, and that these Wi-Fi networks also would be producing radio frequency signals or fields. Finally, I note the evidence before me that many residents in the condominium complex use cellphones, which also would contribute to any radio frequency signals or field. As a result, I have no basis in the evidence before me to support a conclusion that any radio frequency signals or field that may be created by the cellphones used by the security staff is a contributing source of the applicant's symptoms.

[70] Next I will consider the changes made by EPS regarding the equipment in the security closet. With the exception of the temporary placement of the cellphone charger in this room for a brief period of time, no substantial changes were made to this equipment. A new monitor was purchased to better view the security camera footage, but this was placed in the security office. A data cable was run from the security closet to the security office in order for the security staff to be able to view the footage in the security office. A new DVR was purchased in June 2013 and installed in the security closet, and another data cable was run from the security closet to the security office.

[71] In my view, the two data cables installed between the security closet and the security office cannot be found to be a contributing factor to the applicant's symptoms. As testified to by Mr. Wu, data cables emit a very low electro-magnetic field. Moreover, if the data cables were a material source of electro-magnetic radiation, one would not expect Mr. Van Loosen's readings to have dropped so significantly as he moved down the hallway from the security closet to the security office, given that these two cables run through the ceiling and cover the whole distance between these two rooms. While there was some effort on the part of applicant's counsel to raise an issue about a lack of shielding around these data cables, any lack of shielding cannot explain the drop in electro-magnetic radiation as measured twice by Mr. Van Loosen as he moved down the hallway along the route travelled by these cables.

[72] There was some effort on the part of applicant's counsel to attribute increased electro-magnetic radiation to the new DVR in the security closet. While it is true that the reading on Mr. Van Loosen's device went beyond the limits when he placed the device immediately on top of the DVR, I note that Mr. Van Loosen was clear that this is not how the device is designed to be used and that the device is to be held at waist level. Further, it was clear from Mr. Van Loosen's measurements in the security closet that, when held at waist level, there was no increase in the reading as he approached the DVR. Applicant's counsel ventured that the electro-magnetic radiation emitted by the DVR could be projecting in an upward manner. This, however, would not explain the lower readings in the second floor hallway above the security closet door or the consistently lower readings on the second floor of the applicant's unit.

[73] Accordingly, I find that the new DVR and the data cables installed by EPS from the security closet to the security office are not contributing factors to the applicant's symptoms.

[74] The next change relates to the installation and use of the wand system. The evidence before me indicates that the buttons for this system are located in the stairwells at either end of the hallway outside the applicant's unit. The evidence indicates that the buttons are not electrically charged, but rather emit a magnetic signal that is opposite to the wand in order to provide a reading. There is no evidence before me as to whether the magnetic signal emitted by these buttons would be measured by Mr. Van Loosen's device. If this signal could be measured by this device, then once again there is the problem that the measurements actually decrease significantly as one approaches the location of these buttons, which is not consistent with these buttons being a source of electro-magnetic radiation that is a contributing cause of the applicant's symptoms. If the magnetic signal emitted by these buttons is not measured by this device, then I am left with the absence of any actual objective evidence to substantiate any connection between the buttons and the applicant's symptoms.

[75] With regard to the wands, the evidence indicates that these are carried by security staff while on patrol, are deposited in the management office to charge and

download data, and are kept in the security office if the management office is not open at the end of the shift. While on patrol, security staff would walk by the applicant's unit while patrolling the first and second floor hallways a few times per shift. The evidence before me suggests that the applicant experiences a sudden onset of or increase in symptoms when exposed to a source of electro-magnetic or radio frequency radiation which is just as suddenly alleviated when the source is turned off or removed. If the wands were the source of the applicant's issue, one would expect that she would be experiencing brief episodes of increased symptoms when the security staff walked by her unit with the wands, followed by immediate relief once they had moved on. That, however, is not the evidence before me. The applicant's evidence is that she experiences constant and unremitting symptoms, rather than brief and temporary aggravation.

[76] In attempting to explain the applicant's report to her doctor in December 2013 that she had experienced some diminution of her symptoms, it was suggested that perhaps around this time a YCC 365 Board member had asked security staff to stop using the wands while patrolling the applicant's building. Mr. Walker confirmed that these kinds of requests had been made on an informal basis to security staff, although no formal instruction in this regard had been received. In my view, this line of inquiry is entirely speculative. While there may indeed have been occasions when security staff were asked not to use the wands in the applicant's building, there is no actual evidence before me to establish that this occurred in December 2013 or was the reason for any alleviation of the applicant's symptoms. In fact, the only objective evidence before me regarding the use of the wands indicates that the wands were used in the applicant's building on December 18 and 19, 2013, shortly before her doctor's appointment on December 20, 2013.

[77] Accordingly, I find that the evidence before me does not support that the wand system is a contributing factor to the applicant's symptoms.

[78] Then there are the new security cameras installed by SVD. The evidence indicates that the cameras are installed along the hallways, with data and power cables

running to an intermediate switch at either end of the hallway. Once again, this configuration is not consistent with the significant decrease in electro-magnetic radiation as measured by Mr. Van Loosen as he moved down the hallway away from the security closet and the door to the applicant's unit. Further, while there is a data cable running down the hallway ceiling from the intermediate switch on the first floor to the main switch in the electrical room across from the security office, this cable is extremely low voltage and identifying this as a contributing source of the applicant's symptoms is not consistent with Mr. Van Loosen's measurements. If this cable were the source, one would expect to see consistently elevated readings along the path of the cable along the length of the entire hallway.

[79] Further, the consistent evidence of the applicant and her family is that the applicant's worst symptoms occurred during the period from March to August 2013. During this time period, no work was being done by SVD in the applicant's building, apart from the replacement of a few already installed cameras. The work by SVD to install new security cameras in the applicant's building did not commence until mid-September 2013.

[80] At most, what can be said is that there are elevated electro-magnetic radiation readings associated with the area around the security closet door and perhaps in the ceiling area above the security closet door. There is no evidence before me to indicate that any work was done by YCC 365 with regard to the new security system relating to the walls around the security closet door or that was specific to the ceiling area above the security closet door. As previously indicated, the only changes made to the ceiling area involve the running of two data cables from the DVRs in the security closet to the security office and the running of one data cable from the intermediate switch on the west side of the first floor to the main switch in the electrical room on the east side of the floor. For the reasons already indicated, I have found that these data cables are not the source of any elevated electro-magnetic radiation specifically associated with the area above the security closet door.



[81] It may be that there is some electrical wiring in the walls or ceiling around the security closet door which is unassociated with the new security system that is the cause of these elevated readings. Any such electrical wiring could well have been present for some time. If no changes were made to any electrical wiring in this location in the spring or early summer of 2013, then any elevated electro-magnetic radiation associated with this location could not be the cause of the applicant's symptoms. Given that the Application was framed in relation to the new security system, no evidence was tendered regarding other potential sources of electro-magnetic fields. And in the absence of evidence, any theorizing about other potential sources of the applicant's symptoms is just speculation.

[82] I was asked by applicant's counsel to conclude that there may have been other work done by YCC 365 or its contractors in relation to the new security system about which I did not hear evidence, on the basis that the right hand may not have known what the left was doing. I am not prepared to draw any such conclusion. I heard from representatives of both EPS and SVD regarding the work that each of these companies did in relation to the new security system. I found their evidence about the nature of the work performed to be clear and comprehensive.

[83] I also was asked by applicant's counsel to draw an adverse inference from the fact that YCC 365 declined to turn off its security system for the purpose of the testing conducted by Mr. Van Loosen. I decline to do so. In my view, YCC 365 was understandably reluctant to turn off the security system for this purpose, both due to the potential for an incident to occur during this time that would not be recorded and due to the potential cost of shutting down the system. Applicant's counsel made much of Mr. Wu's evidence that if there was a relatively brief loss of power to the system (less than one hour), there was an 80% chance that the system would re-boot by itself without any difficulty. However, if the services of Mr. Wu or others at SVD were to be required in order to re-boot the system, the cost was estimated to be between \$2,600 and \$3,800 for the entire system, which is not an insubstantial cost. Moreover, as I already have found, the measurements taken on two occasions by Mr. Van Loosen are inconsistent

with attributing any elevated levels of electro-magnetic radiation to any of the elements of the new security system.

[84] Finally, I will address the applicant's submission that the respondents violated the procedural component of the duty to accommodate. In my view, this submission is not supported by the evidence. The applicant raised a concern about the cellphone charger, and this equipment was moved very shortly afterwards even without any medical documentation to support that this equipment was causing or contributing to the applicant's symptoms. While the applicant provided some medical documentation in response to counsel's first letter of April 18, 2013, Dr. Handford's April 22, 2013 letter does not make any specific recommendation for accommodation or even clearly articulate a link between the presence of equipment in the security closet or security office and the applicant's exacerbated symptoms, saying only that this equipment "appears" to have exacerbated her symptoms. In response to new counsel's letter of May 23, 2013 seeking further information, no response was provided by Dr. Handford until July 26, 2013, and then only to say that he was not in a position to respond and to ask that YCC 365's questions be re-directed to the applicant.

[85] By this time, of course, the applicant already had filed her Application. In her Application, it is clear that the applicant was operating under the mistaken belief that the new security system was wireless or some kind of hybrid system. The Response clarified that there were no wireless components to the new system. Applicant's counsel is critical of the respondents for not re-directing their questions to the applicant following Dr. Handford's letter. However, the applicant was aware of counsel's May 23, 2013 letter and what information was being sought, given that she had discussed the letter with Dr. Handford, and did not take steps herself to provide any response. In addition, the evidence before me indicates that following the election of the new Board of Directors in the fall of 2013, there were renewed attempts to discuss potential accommodations for the applicant.

[86] In all of these circumstances, I find no basis in the evidence to support a violation of the procedural component of the duty to accommodate by the respondents.

## ORDER

[87] For all of the foregoing reasons, the Application is dismissed.

Dated at Toronto, this 18<sup>th</sup> day of July, 2014.

*“Signed by”*

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Mark Hart  
Vice-chair