



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Ahmad Kamal

Applicant

-and-

Peel Condominium Corp. No. 51 and Alba Property Management Inc.

Respondents

A N D B E T W E E N:

Ashfaq Ali

Applicant

-and-

Peel Condominium Corp. No. 51 and Alba Property Management Inc.

Respondents

A N D B E T W E E N:

Farooq Minhas

Applicant

-and-

Peel Condominium Corp. No. 51 and Alba Property Management Inc.

Respondents

DECISION

Adjudicator: Sheri Price

Date: September 30, 2016

File Numbers: 2013-15958-I; 2013-15959-I; 2013-16113-I

Citation: 2016 HRTO 1282

Indexed as: Kamal v. Peel Condominium Corp. No. 51

APPEARANCES

| | | |
|---|------------------|----------------------|
| Ahmad Kamal, Applicant |))) | Self-represented |
| Ashfaq Ali, Applicant |))) | Self-represented |
| Farooq Minhas, Applicant |))) | Self-represented |
| Peel Condominium Corp. No. 51 and Alba Property Management Inc., Respondents |)))) | Carol Dirks, Counsel |

INTRODUCTION

[1] These are three Applications, filed under s.34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (“the *Code*”), alleging that the respondent condominium corporation and the respondent property management company discriminated against the applicants because of their creed by holding a special owners’ meeting on the evening of October 16, 2013, which was Eid-ul-Azha (also known as Eid al Adha), an important religious holiday for Muslims.

[2] The three applicants, who are Muslim, are all unit owners in the respondent condominium corporation. They contend that the respondents would never have held a meeting on another religion’s holy day, such as Christmas or Diwali, and that the holding of a special owners’ meeting on Eid-ul-Azha was a deliberate act of discrimination against Muslims. In addition, the applicants allege that the scheduling of the special owners’ meeting on October 16, 2013 interfered with their ability to adhere to their religious beliefs on Eid-ul-Azha. In this way, the applicants allege that the respondents’ actions had a disadvantageous effect on them because of their creed, and were therefore discriminatory under the *Code*.

[3] For its part, the respondent Peel Condominium Corporation #51 (“PCC #51” or “the condominium corporation”) denies that it discriminated against the applicants because of their creed. Contrary to the applicants’ allegation, PCC#51 submits that it attempted to avoid scheduling the special owners’ meeting on Eid-ul-Azha. PCC #51 points out that the October 16, 2013 special owners’ meeting was scheduled prior to September 26, 2013, which is when information packages for the meeting were mailed out to unit owners, and therefore before it was known that October 16, 2013 would be Eid-ul-Azha. (During the hearing, the parties presented evidence that, whereas some Muslims celebrate Eid-ul-Azha based on calendar dates that are known well in advance, others, including the applicants, celebrate Eid-ul-Azha 10 days after the crescent moon has been announced by a sighting committee in the geographic area where they reside – in this case, on October 6, 2013.)

[4] In any event, the condominium corporation denies that the holding of the meeting on Eid-ul-Azha discriminated against the applicants because of their creed. It submits that, in order to make out their discrimination claim, the applicants would have to establish that the holding of the special owners' meeting on their religious holiday interfered with their ability to observe the tenets of their faith. In this case, PCC #51 submits that the applicants could have attended the special owners' meeting on the evening of October 16, 2013 and still adhere to their religious beliefs. Accordingly, the condominium corporation disputes that the holding of the meeting on October 16, 2013 disadvantaged the applicants because of their creed.

[5] In the alternative, the condominium corporation submits that, even if the holding of the special owners' meeting on October 16, 2013 did have a disadvantageous impact on the applicants because of their creed, it accommodated the applicants' creed-based needs by allowing them to participate in the special owners' meeting by proxy, pursuant to the *Condominium Act, 1998*, S.O. 1998, c. 19 ("*Condominium Act, 1998*"). The respondent PCC #51 submits that, like any condominium owner who might be unable to attend a meeting for *Code*-related reasons, such as creed, disability, family status, etc., the applicants had the option of sending a proxy holder to the meeting who could participate in the meeting in the same manner as the unit owner and vote on the unit owner's behalf.

[6] As for the respondent Alba Property Management Inc. ("Alba"), it submits, and the condominium corporation agrees, that the condominium corporation's Board of Directors controls the scheduling of special owners' meetings, including the one held on October 16, 2013. The respondents submit that Alba did not set the original date for the meeting and had no power to change the date of the meeting, after the applicants requested it. Accordingly, Alba disputes that it could have any liability flowing from the date of the special owners' meeting. In the alternative, Alba agrees with PCC #51's submissions that there was no direct or indirect discrimination against the applicants because of their creed, and that, in any event, the option to participate in the meeting and vote by proxy was a reasonable accommodation of the applicant's *Code*-related needs.

[7] In their Applications, the applicants alleged that the respondents discriminated against them with respect to the “occupancy of accommodation” (i.e. housing), contrary to s. 2 of the *Code*. However, the respondents deny that s. 2 has any application to the case at hand, because the October 16, 2013 meeting at issue was a meeting for owners of units in PCC #51, not residents of those units. I put it to the respondents that, even if the social area of housing did not apply, it seemed that another social area of the *Code*, such as services (s.1) might be engaged. Ultimately, the respondents did not pursue this issue. In any event, since I have found that the respondents’ actions were not discriminatory, it is not necessary for me to determine which social area of the *Code*, if any, is engaged.

[8] The three Applications were heard together over the course of multiple days. The applicants testified on their own behalves. Mr. Minhas participated in the hearing and testified with the assistance of an English-Urdu interpreter provided by the Tribunal. The respondents called Sudipta Bhattacharya, the President of the condominium corporation’s Board of Directors, as a witness. Mr. Bhattacharya has owned and resided in a unit at PCC#51 since February 2007. The respondents also called Mentor Bardhi to testify. Mr. Bardhi has been the property manager at PCC #51 since January 2009, initially with another property management company, and, since May 2013, with Alba, which is his own company.

BACKGROUND

[9] PCC #51 is a non-profit corporation created pursuant to the *Condominium Act, 1998* for the purpose of administering a condominium project in Mississauga, consisting of 169 units in three buildings.

[10] As noted above, the three applicants all own in units in PCC #51, in which they have resided at all material times. According to the applicants’ testimony, Mr. Ali purchased his unit in PCC #51 in August 2004, Mr. Minhas in April 2005, and Mr. Kamal purchased and moved into his unit in late 2009 or early 2010.

[11] Alba is a corporation that provides property management services to PCC #51

pursuant to the terms of a contractual agreement. As noted above, Mr. Bardhi owns Alba and is the property manager at PCC #51. Mr. Bardhi testified that his responsibilities as property manager at PCC #51 include the maintenance and repair of common elements, maintaining the condominium's financial and other records, ensuring the safety and security of the property, and enforcing condominium corporation rules.

Need for Major Repairs at PCC #51

[12] There is no dispute that, under the *Condominium Act, 1998*, the condominium corporation is legally responsible for the repair and maintenance of the common elements of the condominium property.

[13] The respondents' witnesses, Mr. Bhattacharya and Mr. Bardhi, both testified that, in or around June 2013, the condominium corporation obtained a condition survey from a professional engineering company that indicated that major repairs needed to be made to the common elements of the condominium property, particularly to the concrete balconies and exterior walls. Mr. Bhattacharya and Mr. Bardhi testified that many of the concrete balconies at the condominium property were in very poor condition and in need of immediate repair. They both testified that concrete had fallen from a number of the balconies due to the deterioration, and that the condominium corporation had had to take the extraordinary step of instructing unit owners not to use their balconies as a result of such hazard. Mr. Bhattacharya also testified that the condominium corporation's insurer had threatened to stop insuring the condominium corporation based on the need for repairs.

[14] Mr. Bhattacharya testified that, at the time it received the condition survey, the condominium corporation did not have enough money to cover the cost of repairs to the balconies and exterior walls. Mr. Bhattacharya testified that an engineering firm retained by the condominium corporation estimated that it would cost approximately \$2 million to carry out the necessary repairs. However, there was only \$200,000 or so in the reserve fund account in 2013, some of which was required to pay other costs, such as the cost of the condition survey.

[15] Mr. Bhattacharya testified that the Board of Directors had clear authority under the *Condominium Act, 1998* to levy a special assessment against unit owners in order to raise the funds to pay for the necessary repairs. However, Mr. Bhattacharya testified that the Board members did not want to pursue this option, because it would be a financial hardship for many of the unit owners.

[16] Mr. Bhattacharya explained that if the condominium corporation were to levy a special assessment, the total amount of funds needed for repairs would be divided by the 169 units, according to square footage, and the unit owners would be required to pay the special assessment in a relatively short period of time. Mr. Bhattacharya testified that he anticipated that the special assessment could be paid by instalments over the course of one year at most, provided that the condominium corporation could find a contractor willing to be paid in instalments. (In fact, Mr. Bhattacharya testified that the contractor who was eventually hired told him that it would not have been willing to be paid in instalments or to undertake the repair project without the financing in place up front.)

[17] In order to raise \$2 million for repairs to the concrete balconies and exterior walls, Mr. Bhattacharya testified that the condominium corporation would have needed to levy a special assessment of between \$10,000 and \$12,000 per unit, depending on the size of the unit. He testified that if a unit owner was unable to pay such special assessment, then a lien would have to be registered on the unit. If the unit owner was still unable to pay the amount owing after the lien was registered, the property could be sold by the bank under power of sale, with the monies owing being paid out of the sale proceeds. In other words, Mr. Bhattacharya testified, raising the monies needed for major repairs by levying a special assessment could result in some unit owners losing their homes. Mr. Bhattacharya testified that the Board of Directors was very anxious to avoid this possibility when raising the monies required for the necessary repairs.

[18] Mr. Bardhi confirmed Mr. Bhattacharya's evidence on these points. He testified that, in 2011, when PCC #51 had to levy a special assessment of just \$1000 per unit, payable over two months, it ended up having to lien over 15 units in the condominium.

Mr. Bardhi testified that he fully expected that the situation would have been much worse if PCC #51 had attempted to raise the funds needed for the major repairs through a special assessment of \$10,000 or more per unit.

Proposed borrowing bylaw

[19] Mr. Bhattacharya testified that, in order to ease the financial burden that a special assessment would have had on many unit owners, the Board of Directors decided to seek the unit owners' approval for the condominium corporation to borrow the monies needed to repair the balconies and exterior walls.

[20] Mr. Bhattacharya testified that whereas, in the best case scenario, a special assessment would require unit owners' maintenance fees to be increased by \$850 to \$1000 per month for a one-year period (to raise the \$10,000 to \$12,000 required per unit), the unit owners could repay a loan over an extended period of time through a relatively modest increase to monthly maintenance fees. By way of example, Mr. Bhattacharya testified that an individual who had previously been paying \$510 per month in maintenance fees would end up having to pay an additional \$50 to \$60 per month as a result of the loan.

[21] Mr. Bhattacharya testified that, pursuant to the *Condominium Act, 1998*, a condominium corporation may not borrow any funds without the express approval of a majority of condominium owners at a duly called owners' meeting (s.56). In addition, Mr. Bhattacharya testified that the condominium corporation would also be required to have a bylaw authorizing the loan registered on title before taking out a loan.

[22] With the assistance of a broker, and subject to the owners' approval, Mr. Bhattacharya testified that the Board succeeded in negotiating with one of Canada's major banks to borrow the needed funds at a much better interest rate than would have been available through private financing. Ultimately, Mr. Bhattacharya testified that the Board was able to negotiate a loan at a 3.69 percent interest rate, repayable over 10 years, subject to the approval of a bylaw by the owners authorizing the loan, and

providing that the loan was finalized by December 31, 2013. Mr. Bhattacharya, who has an accounting background, testified that these were excellent terms for the condominium corporation and ultimately the unit owners. Mr. Bhattacharya's evidence on all of the above points was confirmed by Mr. Bardhi.

Special Owners' Meeting is Scheduled for October 16, 2013

[23] Both of the respondents' witnesses testified that, under the *Condominium Act, 1998*, notices of owners' meetings must be given to owners a minimum of 15 days before the date of the meeting. In addition, Mr. Bhattacharya testified that it takes about a week to prepare the meeting notices and information packages and to have them reviewed by legal counsel and the Board before they are sent out. Once the materials have been finalized, it takes another week or so for the property manager to copy 169 packages and to mail them out to the unit owners, who may or may not reside in their units. Accordingly, Mr. Bhattacharya testified, owners' meetings need to be scheduled a minimum of four weeks in advance.

[24] Mr. Bhattacharya testified that the Board wanted to have an owners' meeting about the proposed borrowing bylaw as soon as possible so that the bylaw could be registered on title and the loan finalized prior to the bank's December 31, 2013 deadline. He testified that the Board expected that it would take a minimum of eight weeks, following approval of the bylaw, to take these steps.

[25] Taking all of the above into account, Mr. Bhattacharya testified that the Board decided at its September 9, 2013 meeting that a special owners' meeting to vote on the borrowing bylaw would be held on October 16, 2013, subject to confirming the availability of the lawyer who would chair the meeting and the engineer who had prepared the condition survey. In selecting the date for the meeting, Mr. Bhattacharya testified that the Board excluded Monday, October 14, 2013 as a possibility because it was a statutory holiday (Thanksgiving), and Tuesday, October 15, 2013, because it was Eid-ul-Azha. Mr. Bhattacharya testified that the Board determined that Eid-ul-Azha would be on October 15, 2013 by conducting a Google search.

[26] During this proceeding, Mr. Kamal and Mr. Ali suggested that the Board deliberately scheduled the special owners' meeting for Eid-ul-Azha so that the Muslim unit owners in PCC #51 would not attend the meeting, thereby making it easier for the Board to "push" the borrowing bylaw through. Mr. Bhattacharya denied this.

[27] Mr. Bhattacharya pointed out that the proposed borrowing bylaw could not be passed unless a majority of *all* unit owners voted in favour of it, not just those who attended the meeting in person or by proxy. In this way, Mr. Bhattacharya explained, a failure to vote in favour of the borrowing bylaw would have had the same effect as voting "no". In order to maximize the prospect of having the borrowing bylaw approved, Mr. Bhattacharya testified that the Board wanted to have the meeting on a day when as many unit owners as possible would be able to attend, and specifically tried to avoid holding the meeting on a religious holiday or other festival.

[28] On September 26 and/or 27, 2013, the property manager, Mr. Bardhi, mailed all unit owners a "Notice of Special Owners' Meeting", informing them that a special owners' meeting would be held at the condominium property at 7:00 p.m. on October 16, 2013, for the purpose of having the unit owners vote on whether to adopt a bylaw that would authorize the condominium corporation to borrow \$1.8 million to be used to make major repairs ("the borrowing bylaw" or "bylaw #8").

[29] The meeting information packages that were mailed to unit owners also included, among other things: the meeting agenda; a copy of the proposed borrowing bylaw; a letter from the Board president, Mr. Bhattacharya, explaining the need for the loan and the consequences of not approving the loan (i.e. the levying of a special assessment); a copy of the condition survey recommending "immediate repairs" to the balconies and exterior walls; a "proxy and ballot for the approval of bylaw no. 8", enabling unit owners to vote "Yes (In Favour)" or "No (Against)" on the proposed borrowing bylaw; and a separate sheet providing "instructions for balloting and proxy use."

[30] Mr. Bhattacharya testified that he reviewed the information package before it was sent out and he was very confident that it provided sufficient information to unit owners

to enable them to decide whether or not they wanted to vote in favour of adopting the borrowing bylaw.

[31] On October 3, 2013, shortly after receiving his meeting information package, Mr. Ali testified that he approached Mr. Bardhi and asked him how he knew that October 16, 2013 would not be Eid-ul-Azha, because the moon had not yet been “announced”. Mr. Ali testified that Mr. Bardhi responded by telling him that the date of the meeting had already been set and that it was not going to be changed.

[32] Mr. Bardhi denied that this exchange took place. Mr. Bardhi, who is also Muslim, testified that he recalled talking to Mr. Ali about the fact that Eid-ul-Azha was approaching. However, Mr. Bardhi denied that Mr. Ali raised any concern with him about the date of the special owners’ meeting or suggested that it would fall on Eid-ul-Azha. Nor did he receive any telephone calls or inquiries from other owners in that regard (until he received a letter from the applicants’ lawyer on October 9, 2013, which is addressed below). Mr. Bardhi testified that he and his family, like many Muslims in Canada, celebrated Eid-ul-Azha on October 15, 2013, and that he only found out later than some people celebrated on October 16, 2013 based on the moon sighting.

[33] Mr. Bhattacharya testified that, in all of his time at PCC #51, it has been very common for unit owners to vote by proxy, instead of attending the meetings and voting in person. This evidence was confirmed by Mr. Bardhi, who has been involved in condominium management since 2003, and who provides property management services at four other condominiums besides PCC #51. He testified that in his experience there are “always” more proxies than ballots cast by attendees at condominium meetings.

[34] Mr. Bhattacharya testified that, after the meeting information packages were sent and received by unit owners, he began the process of collecting proxies for the October 16, 2013 vote. Mr. Bhattacharya testified that no owners raised any issue with him about the date of the meeting. However, he testified that he was aware that some of the owners were very opposed to the proposed borrowing bylaw.

[35] Specifically, Mr. Bhattacharya testified that on October 2 or 3, 2013, an owner whom I will identify by his initials, “A.S.,” told Mr. Bhattacharya that he and some other owners would go to any extent to block the proposed borrowing bylaw and the major repairs.

[36] Mr. Bhattacharya also testified that some owners from whom he collected proxies told him that the applicant, Mr. Ali, had urged them to vote against the borrowing bylaw and told them that Mr. Bhattacharya was lying to unit owners about the loan. Mr. Bhattacharya testified that he heard that Mr. Ali was attempting to collect proxies opposing the borrowing bylaw. Mr. Ali testified that this was accurate.

[37] There is no dispute that all three applicants were very opposed to the loan during the relevant time frame.

Applicants’ October 2013 letter objecting to the meeting and the loan

[38] Mr. Bardhi testified that the first he heard of any problem with the date of the meeting was on October 9, 2013, when a letter dated October 8, 2013 was faxed to the property management office from Saadia Ali Bokhari, a lawyer who indicated that she had been retained by the three applicants, as well as four other unit owners, including A.S., the owner referred to above.

[39] Mr. Bardhi testified that Mr. Kamal also hand-delivered a copy of the letter to him on October 9, 2013. Mr. Bardhi testified that he alerted the board members to the letter the same day he received it. This was confirmed by Mr. Bhattacharya.

[40] In her October 2013 letter, the applicants’ lawyer opposed the upcoming special owners’ meeting and “urgently request[ed]”, among other things, that the Board abandon the “illegitimate and unreasonable \$1.8 million loan proposal for major repairs of common elements” and call an Annual General Meeting to elect a new Board of Directors.

[41] The lawyer's letter also stated that, according to an announcement by the Hilal Sighting Committee of North America on October 6, 2013, Eid-ul-Azha would fall on October 16, 2013, the same date as the owners' meeting. Ms Bokhari argued that it infringed the religious rights of Muslims under the *Canadian Charter of Rights and Freedoms* to hold the special owners' meeting on Eid-ul-Azha, and asked that the meeting be rescheduled.

[42] The letter also outlined a number of other allegations against the Board of Directors of PCC#51, including:

- That it had displayed "GROSS NEGLIGENCE" by "ignoring" an April 23, 2013 Property Standards Order from the City of Mississauga requiring PCC #51 to repaint the exterior walls and balcony railings;
- That the September 2013 meeting notice and information package was "illegal" and constituted "harassment" of the unit owners and that the proposal to borrow \$1.8 million to finance major repairs was "CAUSING FINANCIAL AND MENTAL STRESS TO THE UNIT OWNERS FOR NO RHYME OR REASONS". The letter also suggested that the only repairs needed were the minor ones (painting) identified in the April 2013 property standards order and that the Board was only proposing major repairs to seek financial benefit for themselves;
- That the Board was attempting to hold a secret election at the October 16, 2013 special owners' meeting so that they could "illegally" re-elect themselves and avoid legitimate and democratic elections;
- That the Board had acted "illegally" and "harassed" unit owners by having the property manager collect fee arrears from unit owners so that they would be entitled to vote at the special owners' meeting and at the previous year's Annual General Meeting (*emphasis above all in the original*)

[43] Although Mr. Minhas remained focussed throughout on the scheduling of the special owners' meeting on Eid-ul-Azha, during the hearing, Mr. Kamal and Mr. Ali repeatedly attempted to return to the allegation that the only repairs that needed doing at PCC #51 were the minor ones (painting) identified in the April 2013 Property Standards Order from the City of Mississauga and not the major repairs identified in the condition survey and the allegation that the Board planned to hold a "secret election" at

the October 2013 special owners meeting. Mr. Kamal and Mr. Ali made it clear in their Applications and during the hearing that they believe these allegations are vital to their human rights case.

[44] As I explained numerous times during the hearing, the Tribunal has no jurisdiction to remedy alleged misconduct that is not linked to a prohibited ground of discrimination under the *Code*, and none of the applicants' allegations about secret elections or financial mismanagement, etc. constitute alleged *Code* infringements. In any event, I find that there is no merit to these allegations.

[45] Mr. Bhattacharya and Mr. Bardhi gave credible and compelling evidence that, after receipt of the City of Mississauga's April 2013 Property Standards Order, they explained to the City that major repairs to the balconies and exterior walls were also required, and it did not make sense to paint them before undertaking that work. Both witnesses gave uncontradicted testimony, and I accept, that the City agreed that the painting work should be postponed until the major repairs had been completed.

[46] As sole support for their allegation that the PCC#51 Board members were illegally attempting to hold a secret election at the October 16, 2013 meeting, Mr. Kamal and Mr. Ali point to Mr. Bhattacharya's September 25, 2013 letter to unit owners about the October 16, 2013 meeting. That letter stated that "the purpose of this meeting will be to approve Bylaw No.8 so as to borrow the amount of \$1.8 million to repair the Common-elements as described in the attached documents provided." It also explained to unit owners that if they were unable to attend the meeting, they could appoint someone as their proxy:

In accordance with the Condominium Act, 1998, a vote of more than 50% of all owners is required to pass the borrowing Bylaw No.8; therefore if you are unable to attend you may appoint someone as your proxy by completing the attached proxy form, including your selection of director(s) as the proxy form will now be used as your ballot for election purposes if so indicated.

[47] Mr. Kamal and Mr. Ali contend that the above reference to “including your selection of directors” shows that the Board intended to hold a secret election at the October 16, 2013 meeting.

[48] However, Mr. Bhattacharya testified that this phrase came from a precedent he was using when drafting his September 25, 2013 letter. He also pointed out that his letter stated that the proxy form could be used to select directors “if so indicated” and the proxy form, which was included in the information package, did not so indicate. The only item to be voted upon on the proxy form itself was the borrowing bylaw. In addition, the meeting agenda, which was also in the package, listed the borrowing bylaw as the only item of business.

[49] Mr. Bhattacharya’s evidence on these points was clear and consistent, given in a forthright manner, entirely plausible, and I accept it as credible. In my view, Mr. Kamal’s and Mr. Ali’s allegation that the Board was attempting to hold a secret election to re-elect themselves on October 16, 2013 was entirely without merit.

[50] Likewise, given that, during the relevant time frame, the *Condominium Act, 1998* provided that an owner was not entitled to vote at a meeting if any contributions payable in respect of the owner’s unit had been in arrears for 30 days or more at the time of the meeting, I fail to see how the respondents’ actions in bringing this to the owners’ attention could be characterized as “illegal”.

[51] During the hearing, Mr. Kamal argued that the respondents had planned to use the fact that he owed \$18.35 to prevent him from voting at the October 2013 meeting – a plan which he frustrated by paying the amount owing a couple of days before the meeting. However, Mr. Bardhi testified that Mr. Kamal was never in arrears “for 30 days or more” and had never been at any risk of not being permitted to vote. Nor is there any evidence before me that the respondents ever suggested that any of the applicants (or anyone else) might be prevented from voting because of arrears.

[52] The only allegation in the applicants' lawyer's October 9, 2013 letter that raises an issue under the *Code* is the allegation that proceeding with the October 16, 2013 meeting would discriminate against the applicants because it fell on Eid-ul-Azha.

[53] During the hearing, Mr. Kamal took issue with the fact that PCC #51's lawyer did not respond to Ms Bokhari's letter until November 2013. In my view, however, what is relevant is not the timing or content of the lawyer's letter to Ms Bokhari, but rather how the respondents reacted to the request that the October 16, 2013 meeting be rescheduled because of Eid-ul-Azha.

[54] After receiving the applicants' lawyer's letter, Mr. Bhattacharya testified that he promptly contacted a gentleman in PCC #51 whom he knew to be a very devout member of the Muslim community to confirm when Eid-ul-Azha would be celebrated. Mr. Bhattacharya testified that he texted that gentleman and asked him if Eid-ul-Azha was on October 14 and 15, 2013 (the respondents' position being that is that the celebration of Eid-ul-Azha begins the evening before the "Eid" day) and the gentleman texted him back that that was correct. Mr. Bhattacharya testified that he also spoke to some other members of the Muslim community in PCC #51 about the issue raised by the applicants and they told him that even if October 16, 2013 was Eid-ul-Azha, there were no religious rites that needed to be performed in the evening, and that the 7:00 p.m. special owners' meeting would therefore not cause a problem.

[55] Mr. Bhattacharya testified that it was "not possible", in any event, to cancel and reschedule the meeting on such short notice. Mr. Bhattacharya testified that, by the time the respondents received Ms Bokhari's letter on October 9, 2013, there was not enough time to assemble the board for a meeting and/or to advise the unit owners that the October 16, 2013 meeting had been cancelled, particularly given the intervening long weekend (on October 12, 13, and 14, 2013).

[56] During the hearing, the applicants argued that the respondents could have easily posted a notice on the bulletin board advising that the Wednesday, October 16, 2013 meeting had been cancelled and would be held a week or even a day later or earlier.

However, Mr. Bhattacharya and Mr. Bardhi testified that any notice cancelling and/or rescheduling the meeting would have had to have been mailed to the unit owners, a number of whom do not reside in their units and certain mortgagees. In addition, Mr. Bhattacharya testified that, in order to be sure of complying with the *Condominium Act, 1998* requirements, they would have had to resend the information packages about the proposed borrowing bylaw to all of the unit owners and mortgagees at least 15 days in advance of a rescheduled meeting. Mr. Bhattacharya testified that this likely would have delayed the meeting until mid-November 2013, at which point it would not have been possible to have the bylaw registered on title and the loan finalized prior to the bank's December 31, 2013 deadline.

[57] In all of the circumstances, Mr. Bhattacharya testified that the decision was made to proceed with the meeting, as scheduled.

The Events of October 16, 2013

[58] The applicants, who celebrate Eid-ul-Azha based on the moon sighting in the geographic area where they reside, testified that the moon was announced on October 6, 2013 and Eid-ul-Azha was therefore celebrated 10 days later, on October 16, 2013. Although the respondents initially disputed this, early on in the hearing, they conceded that October 16, 2013 was Eid-ul-Azha for the applicants.

[59] The applicants testified that they were not restricted from engaging in any activities, such as working or attending meetings, because it was Eid-ul-Azha. However, they testified that holding the meeting on Eid-ul-Azha prevented them from having enough time to fulfill their religious obligations.

[60] The applicants testified that observant Muslims have three religious obligations associated with Eid-ul-Azha: first, the applicants testified that they were required to go to mosque to offer prayers in the morning; second, the applicants testified that they were required to sacrifice an animal (or arrange to have one sacrificed for them); and third, the applicants testified that they were required to distribute one third of the meat to

the poor or less fortunate, one third to their friends and relatives, and to keep one third for themselves.

[61] The applicants' testimony in this regard was consistent with an October 30, 2014 letter from the head imam at a Muslim organization in Mississauga, submitted by the respondents, which states in relevant part:

...based on the moon sighting and decision declared by Hilal Committee of Toronto, Eid Al-Adha 2013 was held on the 16th day of October.

Eid al Adha is the second of two religious holidays celebrated by Muslims worldwide each year. This day can be celebrated up to 3 days. Religious prayers are held in the morning hours after sunrise the first day, after which an animal is sacrificed. The evening is mostly spent with family and friends socializing and celebrating. There is no religious rites (*sic*) particular with the evenings of these days.

[62] At the hearing, the applicants agreed that the imam's October 30, 2014 letter was accurate, and should be admitted for the truth of its contents, except they submit that it is more accurate to say that Eid-ul-Azha is always celebrated for three days, as opposed to the imam's statement that Eid al Adha "can be" celebrated up to three days. The respondents did not take issue with this.

[63] Mr. Minhas, who works straight night shifts, testified that he got off work early in the morning on October 16, 2013 and arrived home at approximately 8:00 or 8:30 a.m. He bathed, changed his clothes, and then went to a nearby mosque for Eid-ul-Azha prayers. After prayers, Mr. Minhas testified that he went home where some family members were visiting from out of town for the holiday. At approximately 11:00 a.m., he drove to a farm that was two-and-a-half hours' away with some other people to sacrifice an animal for Eid, as had been pre-arranged through a local grocer. Mr. Minhas testified that he arrived back at PCC #51 at approximately 5:00 p.m. and was told that he could pick up his meat from the grocer (through which the trip to the farm had been arranged) after 7:00 p.m.

[64] Mr. Minhas testified that he went by himself to the October 16, 2013 special

owners' meeting at approximately 7:00 or 7:30 p.m. Mr. Minhas testified that, since purchasing his unit in 2005, the October 16, 2013 meeting was the only meeting he ever attended in person. Mr. Minhas testified that he usually does not go to condominium meetings, because of his work schedule and also, because he does not speak English well enough to understand much of what is said in meetings.

[65] Mr. Minhas testified that when he cannot attend a meeting in person, he usually gives someone his proxy. In fact, he testified that he gave Mr. Ali his proxy for the October 16, 2013 meeting, but he did not know if Mr. Ali submitted it. Mr. Minhas testified that his proxy was signed by his son, who is not a unit owner, and who therefore cannot give a valid proxy. Accordingly, it is not clear that the proxy would have been or could have been counted, if submitted. Mr. Minhas testified that he did not know how the proxy form was filled out.

[66] Mr. Minhas testified that he was against the loan because Mr. Ali told him that it would burden unit owners financially. He was also concerned that the loan could interfere with his ability to sell his unit. When asked during cross-examination if he understood that the alternative to the loan would have been a special assessment, Mr. Minhas testified that he did not know.

[67] Mr. Minhas initially testified that he did not remember if he received a ballot when he went to the October 16, 2013 meeting, but later testified that he did not receive one. (The respondents dispute this. Mr. Bhattacharya testified that an owner who has given a proxy is entitled to attend the meeting in person, have the proxy cancelled and cast a ballot.) In any event, Mr. Minhas testified that he left the meeting without voting, before the meeting was finished, sometime between 8:00 and 9:00 p.m. Mr. Minhas testified that he did not vote on the borrowing bylaw at the October 16, 2013 meeting because there was no point in doing so after Mr. Kamal and Mr. Ali and a number of other owners left the meeting. Mr. Minhas testified that after leaving the meeting he went to pick his meat up from the grocer, at approximately 9:00 p.m.

[68] Mr. Minhas testified that he, his wife, and his son distributed the meat that was in

“good condition” to two or three neighbours. However, he testified that he was not able to distribute all of his meat and had to throw some of it out because there was not enough room for it in his fridge. Mr. Minhas testified that he did not have enough time to visit with his friends and relatives before he had to leave home to go back to work at 10:30 p.m. Mr. Minhas testified that his wife could not prepare a feast on the evening of October 16, 2013 because the meat arrived so late. Mr. Minhas testified that his wife cooked a feast the following day. However, Mr. Minhas testified that the relatives who had been visiting from out of town and one of his sons had left by that time, and were not there for the feast.

[69] Mr. Minhas testified that although the “first day” of Eid-ul-Azha is the most important, he could have met his religious obligations by sacrificing an animal and distributing the meat on the second or third day of Eid-ul-Azha. However, Mr. Minhas testified that he wanted to do the sacrifice and distribute the meat on the first day of Eid-ul-Azha, because that is when his family was visiting. He testified that he could not distribute meat to his family members on October 17, 2013 because they had left by then.

[70] Mr. Ali alleges that as a result of the respondents’ decision to hold the special owners’ meeting on October 16, 2013, he did not get to make his sacrifice for Eid-ul-Azha in 2013 and did not distribute any meat.

[71] Mr. Ali testified that he took October 16, 2013 off work for Eid-ul-Azha. He went to the mosque at 9:00 a.m. for approximately one hour for Eid-ul-Azha prayers.

[72] Mr. Ali testified that he made arrangements through a local grocer to sacrifice an animal for Eid-ul-Azha. (He initially testified that he made such arrangements the week before Eid, but he later testified that he made the appointment a couple of weeks before the moon sighting.) Mr. Ali testified that after prayers on October 16, 2013, he went to the grocer to find out his appointment time and was told that if he wanted to slaughter the animal himself, he needed to go to the slaughterhouse that afternoon and wait his turn. At one point, Mr. Ali testified that he was told that his appointment at the

slaughterhouse was at 3:00 to 4:00 p.m. At another point, he testified that his appointment was at 2:00 or 3:00 p.m.

[73] Mr. Ali testified that he decided not to go to the slaughterhouse because he thought he might have had to wait hours to make his sacrifice and therefore might not get back in time for the special owners' meeting that evening. At one point, Mr. Ali testified that it took 45 to 60 minutes to drive to the slaughterhouse, which was 46 kilometres away, and that it was a two-hour return drive. However, he later suggested that it was a two-hour drive each way, which is why he did not think he could get home in time for the special owners' meeting after the slaughterhouse closed at 5:00 p.m. (Mr. Ali testified that the slaughterhouse did not slaughter any animals after sunset and closed at 5:00 p.m.)

[74] Mr. Ali testified that he told the grocer on the morning of October 16, 2013 that he did not have time to go to the slaughterhouse that afternoon, and that they should have the meat slaughtered on his behalf and brought to the grocer for him instead.

[75] However, this seems at odds with Mr. Ali's later testimony about what occurred. Mr. Ali testified that, after he got off work on October 17, 2013, he went to tell the grocer that he had missed his appointment at the slaughterhouse the day before and to ask whether the goat he had paid for had been slaughtered, and if so whether he could still get the meat. Mr. Ali testified that the grocer was surprised to learn that Mr. Ali had missed his appointment the day before and that he did not know if the animal had been slaughtered, whether the meat was still available, or if it had been refrigerated. Mr. Ali testified that the grocer told him that he would have to travel to the slaughterhouse to find out. Given the uncertainty and the travel time involved, Mr. Ali testified that he decided it was not worth it to make the trip, despite the fact that he had paid \$200 to sacrifice the animal.

[76] There was also some inconsistency in Mr. Ali's testimony about what became of his meat. Mr. Ali initially testified that he was not able to distribute his meat on October 16, 2013 because he was "stuck" in the special owners' meeting. He further testified

that, by the second day of Eid-ul-Azha, “all” his meat “was smelling”, having sat out of the refrigerator, and had to be thrown away. This seems inconsistent with Mr. Ali’s testimony, noted above, that he never actually picked up his meat or even knew if the animal he had paid for had been slaughtered.

[77] In any event, Mr. Ali testified that he spent “the whole day almost after 12:00” preparing for the special owners’ meeting that evening. He testified that at approximately 2:00 p.m., he, Mr. Kamal, and a few other unit owners, whose names he could not recall, went to meet with Ms Bokhari, the lawyer they had retained. Mr. Ali testified that the purpose of the meeting, which lasted for one to one-and-a-half hours, was to prepare for the special owners’ meeting that evening. This was largely consistent with Mr. Kamal’s testimony about the meeting.

[78] Mr. Kamal testified that he took October 16, 2013 off from his paralegal business for Eid-ul-Azha. Mr. Kamal testified that he did not go to prayers at the mosque on the morning of Eid-ul-Azha because he was up late the night before writing a book and did not wake up until 10:00 or 11:00 a.m. Mr. Kamal testified that, after waking, he spent some time reading and paying bills until 2:00 p.m., when it was time for the meeting with Ms Bokhari. Mr. Kamal testified that the meeting, which had been arranged the previous day, lasted approximately two hours.

[79] In any event, Mr. Kamal testified that there was not much time between the meeting with the lawyer and the special owners’ meeting, which was scheduled to begin at 6:30 p.m. He testified that his unit was the meeting place for a group of owners who intended to go to the meeting together. Accordingly, after the meeting with the lawyer, Mr. Kamal testified that he went home to wait for people to arrive and that owners started arriving at his unit at approximately 5:30 p.m.

[80] Mr. Kamal testified that he never slaughters an animal himself for Eid-ul-Azha but normally buys an animal or a portion of an animal from a Halal butcher which is just a couple of minutes away from PCC #51. Mr. Kamal testified that he was unable to do this in 2013 because of the special owners’ meeting and that the special owners’ meeting also

prevented him from distributed any meat or spending time visiting his friends. He testified that it is very time-consuming to get the meat, to make three portions and distribute them, and he did not have time to do these things because of the owners' meeting.

[81] During cross-examination, the respondents put it to Mr. Kamal that the reason he had not been able to do these things on October 16, 2013 was not because of the special owners' meeting, but because Mr. Kamal had not made arrangements for these things ahead of time and also because he had chosen to spend much of the day meeting with his lawyer.

[82] In this regard, Mr. Kamal acknowledged that he did not attempt to arrange to buy any meat for Eid-ul-Azha until after he woke on October 16, 2013 at 11:00 a.m. or 12:00 p.m.. At that time, Mr. Kamal testified that he called the place where he usually buys his meat and they told him that he could come at 8:00 or 9:00 p.m. that evening to pay for and pick up some meat. Mr. Kamal testified that that was the earliest appointment available at that point. He testified that many people order their meat for Eid weeks in advance and that they are the ones who get the earliest appointment times and are able to pick up their meat in the morning after prayers and distribute it in the afternoon. However, Mr. Kamal testified that he does not believe in doing everything in this matter, "preplanned and intentionally".

[83] As for his decision to meet with the lawyer on the afternoon of Eid-ul-Azha, Mr. Kamal testified that he and the other unit owners were not under any restrictions and were free to meet with their lawyer whenever they wanted. Mr. Kamal acknowledged that he could have obtained meat if he had not met with his lawyer on Eid-ul-Azha, but testified that it was "essential" to meet with her on that day in order to finalize their strategy for getting the meeting adjourned. He testified that the loan was a major concern and the situation was very tense.

[84] In terms of what happened at the meeting itself, Mr. Kamal testified that he and some other unit owners went with Ms Bokhari to the room where the meeting was to be held at approximately 6:30 p.m., which is when registration for the meeting was

scheduled to begin. The meeting itself was scheduled for 7:00 p.m. Mr. Kamal testified that there were 20 to 30 people there when they arrived, including Mr. Bardhi (who testified that he was doing registration), the condominium's lawyer, who was to chair the meeting, and a note taker. Mr. Kamal testified that, upon arriving, Ms Bokhari started reiterating the points that she had made in her October 9, 2013 letter. Mr. Kamal testified that Ms Bokhari also told the lawyer who had been retained by PCC #51 to chair the meeting that he was in a conflict of interest and could not proceed with the meeting. Specifically, Mr. Kamal testified that Ms Bokhari told the condominium corporation's lawyer that, since he was being paid by all of the unit owners, he could not "go against" any of the owners by proceeding with the meeting, even if a majority wished him to do so. Mr. Kamal shared this view.

[85] Mr. Kamal's evidence on the above points was largely consistent with that of Mr. Ali, who testified that Ms Bokhari went with them to the meeting and explained to those present that holding the meeting on Eid-ul-Azha was a violation of their *Charter* rights.

[86] The respondents' witnesses' evidence on these points was largely consistent with the applicants. Mr. Bhattacharya testified that, after arriving at the meeting with Mr. Kamal, Mr. Ali and others, Ms Bokhari announced that she was there in a dual capacity: as a lawyer for unit owners and as a "social activist". He confirmed that Ms Bokhari began reading her letter to those present. Mr. Bardhi's evidence was consistent. He testified that Ms Bokhari announced that the meeting was illegal and that the condominium corporation should not get a loan.

[87] All of the witnesses testified that there was a lot of shouting at the outset of the meeting. Mr. Bardhi testified that he felt sorry for the PCC #51 lawyer who was chairing the meeting because it was very difficult for him to call the meeting to order with all of the shouting.

[88] Mr. Kamal testified that, at some point, the police showed up at the meeting and that he and a group of owners left shortly afterwards, at approximately 7:30 or 8:00 p.m., as a way of "boycotting" the meeting.

[89] Mr. Ali agreed. He testified that, after an hour or so, he and approximately 10 people walked out of the meeting. Mr. Ali testified that Ms Bokhari suggested that they leave the meeting because the respondents were just going to do what they wanted anyway.

[90] Mr. Kamal was somewhat evasive in his evidence about how the police came to attend the October 16, 2013 meeting. When asked if he knew who called the police, Mr. Kamal first testified, "I don't know. Someone called". However, he later testified, "I think I called them." He then testified that he did call the police because there was a lot of yelling at the meeting, and he thought it would bring some peace and calm to the situation. Mr. Kamal denied the respondents' suggestion that he called the police in an attempt to prevent the meeting from happening. Mr. Kamal also disputed the respondents' testimony that the police walked Mr. Kamal, Mr. Ali and others out of the meeting. He maintained that they left the meeting voluntarily in protest.

[91] Mr. Kamal's testimony about whether he voted on the bylaw at the October 16, 2013 meeting was inconsistent. Mr. Kamal initially testified that he did not vote on the bylaw at the meeting. He then testified that he thought he did cast a ballot against the bylaw. Mr. Kamal later testified that he did not remember whether he had voted or not, and then that he thought he did cast a ballot against the bylaw at the meeting. Still later in his evidence, Mr. Kamal testified that he did not cast a ballot at the meeting, but had given his proxy to A.S. (the owner referred to above) and that he was aware that A.S. gave a number of proxies to Mr. Bardhi at the meeting. Mr. Kamal testified that he did not know if Mr. Ali or Mr. Minhas collected any proxies for the October 16, 2013 meeting.

[92] Mr. Ali initially testified that he had 79 proxies for the October 16, 2013 meeting, which he "showed" to Mr. Bardhi, who was doing registration for the meeting, but Mr. Bardhi would not accept them, telling Mr. Ali that he already had proxies "for that unit". Mr. Ali testified that he left the meeting, taking the 79 proxies with him. However, Mr. Ali later testified that he had 97 "no" proxies at the October 2013 meeting. Still later, during Mr. Bardhi's testimony, Mr. Ali stated that Mr. Bardhi was in the process of registering the proxies Mr. Ali had, when Mr. Ali left the meeting, taking the 97 proxies with him.

Mr. Ali said that after 20 or 30 minutes, A.S., who was actually the proxy holder, came to Mr. Kamal's unit and got the proxies from Mr. Ali to take back to the meeting. Mr. Ali could not say what happened to the proxies after A.S. took them.

[93] Mr. Bardhi denied that Mr. Ali tried to give him any proxies at the October 16, 2013 meeting. He also testified that it would not have been possible for him to "register" any proxies from Mr. Ali in the manner alleged – without taking the proxy forms from Mr. Ali. However, Mr. Bardhi agreed that he accepted a number of proxies from A.S. – well after the meeting had started – on the instructions of the lawyer who was chairing the meeting.

[94] As to whether he played any role in collecting proxies for the October 16, 2013 meeting, Mr. Kamal testified that he did not remember if he solicited or received any proxies for the meeting or even if he had spoken to any other owners about proxies. He testified that "maybe" he had done these things or "maybe not".

[95] Mr. Ali testified that after he and the other unit owners left the special owners' meeting in protest, they all went back to Mr. Kamal's unit with Ms Bokhari, and talked until 11:00 p.m. or 12:00 a.m. about what they should do next. Mr. Ali testified that he got home from Mr. Kamal's very late. However, Mr. Ali later testified that he, Mr. Kamal and Ms Bokhari went back to Mr. Kamal's unit for 45 minutes to an hour only. Either way, Mr. Ali testified that his mother and sister were very upset with him because they had been waiting for him all day and he had not spent any time with them on Eid-ul-Azha and did not go out with them to visit any relatives.

[96] Mr. Kamal disagreed with Mr. Ali's evidence that a group of unit owners came back to his unit after the meeting. Mr. Kamal testified that he went home after the meeting because he was tired and it had been a tense day. He testified that if anyone came to his unit after the meeting it was for five or ten minutes only.

[97] As noted above, during his testimony, Mr. Kamal suggested that he had been prevented from making his sacrifice or distributing any meat for Eid-ul-Azha in 2013. He testified that, because of the special owners' meeting being held on October 16, 2013,

he was “deprived” of the opportunity to perform the “important religious obligation and duty” of sacrificing a goat or sheep and distributing the meat.

[98] However, during cross-examination, Mr. Kamal acknowledged that he did perform the sacrifice and distributed the meat on October 17, 2013, the second day of Eid-ul-Azha. Like the other applicants, Mr. Kamal acknowledged that the sacrifice and distribution of meat can be done on any of the three days of Eid-ul-Azha. However, he testified that it is almost always done on the first day, and that that is the more “pious and sacred thing”.

[99] Mr. Ali also agreed that he could have fulfilled his religious obligations for Eid-ul-Azha on October 16, 17 or 18, 2013. However, he testified that, in Canada, the vast majority of people celebrate Eid-ul-Azha on the first day. Mr. Ali testified that he chose not to make a sacrifice or distribute meat on October 17 or 18, 2013 because he did not want to take another day off work.

Vote on the borrowing bylaw

[100] Mr. Bhattacharya testified that after Mr. Kamal and Mr. Ali and the other unit owners who were with them left with Ms Bokhari, the meeting proceeded peacefully and was chaired by the lawyer retained by the condominium corporation to ensure that everything was done according to legal requirements.

[101] Mr. Bhattacharya testified that after the applicants and the others had left, one owner moved that the meeting be postponed and reconvened on another date to allow more unit owners to participate. The motion was seconded and the chair allowed a vote on the motion. However, the majority voted against postponing the meeting and it proceeded as scheduled. This is reflected in the minutes of the October 16, 2013 meeting.

[102] After the condition survey was presented by the engineer, and there was some discussion of the repairs needed and the proposed loan, those in attendance at the meeting cast their ballots and these were counted along with the proxies.

[103] Mr. Bhattacharya and Mr. Bardhi testified that the borrowing bylaw passed with a strong majority, with 115 out of 169 units voting in favour of approving the borrowing bylaw and only 44 voting against. In addition, Mr. Bhattacharya testified that there were six cancelled ballots, leaving only four unit owners that did not vote on the bylaw.

[104] Mr. Bhattacharya testified that the loan that was authorized by the borrowing bylaw was finalized with the bank on December 27, 2013 and that the major repairs, as well as the painting work identified in the City of Mississauga's 2013 Property Standards Order, were subsequently completed.

ANALYSIS AND DECISION

[105] As noted above, the issue in this case is whether one or both of the respondents discriminated against the applicants because of their creed by holding a special owners' meeting on October 16, 2013.

[106] At a couple of different points after the hearing of these Applications had commenced, the applicants sought to amend their Applications to include other allegations that the respondents infringed their rights under the *Code*. These Requests were denied for the reasons given in Interim Decision 2015 HRTO 53 and orally on the August 13, 2015 and October 6, 2015 hearing dates.

[107] I would also note that a number of factual disputes were raised during the hearing that are not relevant to the issues under the *Code*, and that I have not found it necessary to address and/or determine them in order to decide the Applications. Likewise, I have not addressed certain allegations of discriminatory treatment raised by Mr. Kamal and Mr. Ali during final argument that were not within the scope of these proceedings and not supported by any evidence and were therefore not properly before me.

Applications as against Alba Property Management Inc.

[108] At the outset, I wish to deal with the applicants' allegation that the respondent Alba discriminated against them by holding a special owners' meeting on October 16, 2013.

[109] Having considered the parties' evidence and submissions, I find that the Applications as against Alba are readily dismissed insofar as the evidence establishes that it was the respondent condominium corporation, and not Alba, that scheduled the special owners' meeting for October 16, 2013, and decided the meeting would proceed as scheduled, once the applicants requested that the October 16, 2013 meeting be rescheduled because of Eid-ul-Azha.

[110] Mr. Bhattacharya and Mr. Bardhi both testified that Alba had no power to set or change the date of the special owners' meetings. Their evidence on these points was fairly detailed, consistent, straightforward and clear, and it made sense. Moreover, the respondents' witnesses' evidence that neither Alba nor Mr. Bardhi had the power to set or change the date of the owners' meeting was uncontradicted by any other evidence. Indeed, Mr. Kamal and Mr. Ali acknowledged during cross-examination that PCC #51's Board of Directors sets meeting dates, not Alba, and that Alba works under the Board's direction, pursuant to the terms of its contract with PCC #51. Accordingly, I accept the respondents' evidence on these points as credible. It follows that the Applications as against Alba ought to be dismissed.

[111] As noted above, the issue in this case is whether the holding of a special owners' meeting on October 16, 2013 was discriminatory against the applicants because of their creed. Insofar as Alba lacked the power to set or change the date of the meeting, and in the absence of any evidence that Alba played any role in PCC #51's decision regarding the date of the meeting, there is no basis upon which it could be held liable for any *Code* infringement that occurred as a result of the date of the meeting. Nor is there any other evidence in this case capable of supporting a finding that Alba treated the applicants in a disadvantageous manner because of their creed.

[112] In coming to this conclusion, I have considered Mr. Ali's evidence that, on October 3, 2013, he raised a concern with Mr. Bardhi that October 16, 2013 might end up being Eid-ul-Azha, but Mr. Bardhi dismissed his concern out of hand and told him that the meeting date would not be changed. As noted above, Mr. Bardhi denies this. He testified that, although he and Mr. Ali spoke at some point about the fact that Eid was approaching, Mr. Ali never suggested that there might be a problem with the date of the special owners' meeting or that it might fall on Eid-ul-Azha.

[113] Leaving aside whether Mr. Ali's evidence on this point, if accepted, might be capable of supporting a finding of discrimination under the *Code*, I prefer Mr. Bardhi's evidence that the conversation did not take place as alleged. There are a couple of reasons for this.

[114] First, the evidence that Mr. Bardhi told Mr. Ali that the meeting date would not be changed, without raising the issue with the Board, is inconsistent with the other evidence before me. As noted above, the evidence in this case convincingly establishes that it was the PCC #51 Board of Directors and not Mr. Bardhi who was responsible for deciding whether the date of the meeting would be changed. Based on Mr. Bardhi's testimony, it is clear to me that he is very cognizant of the scope of his own responsibilities, and that of the Board's. In my view, it seems unlikely and is not credible that Mr. Bardhi would have taken it upon himself to dismiss Mr. Ali's concerns and declare that the meeting date would not be changed. My finding that Mr. Bardhi did not do this is also consistent with and bolstered by evidence that he brought Ms Bokhari's letter to the Board's attention as soon as he received it on October 9, 2013, and that it was left to the Board to decide how to react to the letter, including the issue regarding the date of the meeting.

[115] In addition, Mr. Bardhi was a very credible and compelling witness, whose testimony throughout was rich in detail, clear, consistent, and given in a very forthright manner. I accept as credible his evidence that Mr. Ali did not tell him that the meeting might end up being on Eid and that he did not tell Mr. Ali that the meeting date would not be changed. The only evidence that these things occurred came from Mr. Ali, whose

evidence contained a number of inconsistencies (as indicated above at paragraphs 72-77). Such inconsistencies cannot help but cast doubt on the reliability of Mr. Ali's evidence generally, particularly when contradicted by Mr. Bardhi, whose testimony was free from such problems. In the circumstances, Mr. Ali's testimony is not a basis for finding that Mr. Bardhi made the comments attributed to him.

[116] Therefore the evidence does not establish on a balance of probabilities that Mr. Bardhi dismissed Mr. Ali's concerns about the date of the meeting and stated that the meeting date would not be changed. Accordingly, this is not a basis for finding that Alba infringed any of the applicants' rights under the *Code*.

[117] For all of the above reasons, the Applications as against Alba are dismissed.

Applications as against PCC #51

[118] I now turn to the applicants' claim that the condominium corporation discriminated against them by holding a special owners' meeting on October 16, 2013, which was Eid-ul-Azha.

[119] The onus is on the applicants to make out a *prima facie* case by proving in evidence that the condominium corporation treated them in a distinct and disadvantageous manner because they are Muslim (direct discrimination) or that the PCC #51's actions in holding the special owners' meeting on October 16, 2013 had a distinct and disadvantageous effect on them because they are Muslim (indirect or "adverse effect" discrimination).

[120] However, even if the applicants establish they have been disadvantaged by the condominium corporation's actions because of their creed, PCC #51 may still avoid liability under the *Code* if it establishes in evidence either that it accommodated the applicants' creed-related needs or by showing that the applicants' creed-related needs could not have been accommodated without undue hardship (s.11).

[121] In this case, the applicants allege that the PCC #51 treated them in a distinct and

disadvantageous manner by deciding to hold the special owners' meeting on Eid-ul-Azha, and by proceeding with the meeting on that date, after the applicants alerted it to the fact that it was Eid-ul-Azha. In addition, the applicants allege that the holding of the special owners' meeting on Eid-ul-Azha had a distinct and disadvantageous effect on them as Muslims, because it prevented them from adhering to their religious beliefs.

[122] I deal with each of these claims in turn, below.

Whether holding special owners' meeting on Eid-ul-Azha was discriminatory treatment of applicants

[123] Although they did not expressly frame it this way, the applicants argue the condominium corporation treated them in a distinct and disadvantageous manner because they are Muslim, and thereby directly discriminated against them contrary to the *Code*.

[124] In particular, the applicants contend that the decision to hold the special owners' meeting on Eid-ul-Azha was a way of targeting Muslims in PCC #51 and/or excluding them from the meeting. Mr. Minhas testified that, in his nine years in PCC #51, there was never been an owners' meeting on another religion's holy day, such as Easter or Diwali, and he questions why then the condominium corporation would hold a special owners' meeting on a Muslim holiday.

[125] On this latter point, I should note that Mr. Bhattacharya testified that the PCC #51 has held meetings on two Hindu holidays in the recent past, although it is not clear whether those particular holidays have comparable significance for Hindus as Eid-ul-Azha does for Muslims.

[126] In any event, and while I can certainly understand the applicants' perspective, the evidence before me case does not support a finding that the condominium corporation treated the applicants in a distinct and disadvantageous manner because of their creed by holding the special owners' meeting on October 16, 2013.

[127] Indeed, Mr. Bhattacharya's evidence establishes that PCC #51 attempted to avoid having the special owners' meeting on Eid-ul-Azha. As noted above, Mr. Bhattacharya testified that, when the meeting was scheduled in early September, the Board conducted an internet search to find out when Eid-ul-Azha was supposed to be and avoided that date (October 15) when setting the date for the meeting.

[128] Mr. Bhattacharya's evidence about how the October 16, 2013 meeting came to be scheduled was uncontradicted, rich in detail, straightforward, clear, and consistent, and supported by the documents, particularly the minutes of the Board's September 9, 2013 meeting. I accept it as credible.

[129] Such evidence establishes that the scheduling of the meeting on October 16, 2013 was not linked to the fact that that date was Eid-ul-Azha, as celebrated by the applicants. Rather, the fact that the meeting would take place on Eid was unforeseen and followed from the fact that the moon was announced on October 6, 2013, just 10 days before the meeting was to be held.

[130] Accordingly, the evidence does not bear out the applicants' claim that the condominium corporation scheduled the meeting for Eid-ul-Azha because it was targeting Muslims in PCC #51 or attempting to exclude them from the special owners' meeting.

[131] Nor does the evidence establish that PCC #51's decision to *proceed* with the special owners' meeting on October 16, 2013, following receipt of the applicants' lawyer's letter, constituted distinct and disadvantageous treatment of the applicants because of their creed.

[132] Mr. Bhattacharya testified that, notwithstanding what he regarded as serious, false allegations against him and the Board contained in the applicants' lawyer's October 9, 2013 letter, he still sought to clarify in good faith whether proceeding with the meeting on October 16, 2013 would interfere with Eid-ul-Azha and/or whether the meeting should or could be postponed. Mr. Bhattacharya testified that the information he

received from other Muslim members of the PCC #51 community was that the date of the meeting was not a problem. In particular, Mr. Bhattacharya, who is not himself Muslim, testified that he was assured that Eid was on October 15, 2013, which was his belief all along, and that even if some individuals celebrated Eid on October 16, 2013, attending the evening meeting would not interfere with their ability to fulfill their religious obligations.

[133] In any event, Mr. Bhattacharya testified that it was not feasible to reschedule the meeting at that point, given the proximity of the meeting date and given that postponing the meeting would have jeopardized the Board's ability to secure the loan on the very favourable terms that had been negotiated with the bank in advance of the December 31, 2013 deadline.

[134] Mr. Bhattacharya's evidence as to why the meeting date was not changed was straightforward, clear and consistent, and I accept it is credible. Based on such evidence, I am not persuaded that the Board's decision to proceed with the meeting as scheduled, after receipt of Ms Bokhari's October 9, 2013 letter, constituted distinct and disadvantageous treatment of the applicants because they are Muslim.

[135] This is not to say that the condominium corporation was correct in its conclusion that Eid-ul-Azha was on October 15, and not on October 16, 2013. On the contrary, we know that for the applicants, who celebrate based on the moon sighting in their particular geographic location, Eid-ul-Azha was on October 16, 2013.

[136] However, the issue at this stage of the analysis is not whether PCC #51 was right or wrong about whether proceeding with the special owners' meeting would interfere with the applicants' ability to adhere to their religious beliefs. This comes in, certainly, in considering the applicants' adverse effect discrimination claim, below. At this stage, however, the issue is whether the Board's decision to hold the meeting on October 16, 2013 was based in whole or in part on the applicants' creed. As set out above, the evidence fails to establish such a link. Accordingly, the applicants' claim that the condominium corporation treated them in a distinct and disadvantageous manner because they were Muslim must be dismissed.

[137] In coming to this conclusion, I have considered the evidence before me about the condominium corporation's decision to hold the 2010 AGM during the month of Ramadan, as well as evidence about its role in closing an opening in the fence between PCC #51 and a neighbouring property, which has a mosque. The applicants contend that evidence about these incidents reveals an anti-Muslim bias on the part of the condominium corporation, and therefore assists them in establishing that the decision to hold the special owner's meeting on October 16, 2013 was discriminatory. I disagree.

[138] Dealing first with the fence allegation, in or around 2012, PCC #51 requested that its next door neighbour, a residential housing complex that also has a mosque, repair a broken fence to prevent people from passing through it. The applicants testified, and I accept, that the opening in the fence was frequently used by Muslim members of the PCC #51 community as a shortcut to the mosque. I also accept Mr. Kamal's evidence, largely confirmed by the respondents, that whereas it took five or ten minutes to walk, or two to three minutes to drive, to the mosque via the roadway, it took only one minute to walk to the mosque through the opening in the fence.

[139] Mr. Bhattacharya and Mr. Bardhi both gave detailed evidence about the fence. The opening in the fence, they testified, was never there by design, but rather the result of some individuals knocking down or removing some of the boards.

[140] Mr. Bhattacharya and Mr. Bardhi testified that the opening in the fence was adjacent to a driveway leading to and from PCC #51's underground parking garage, and some unit owners had expressed concern that people coming through the fence could get hit by a car driving in or out of the parking garage. In addition to the health and safety concern, Mr. Bhattacharya testified that PCC #51 was concerned about its potential liability if someone were injured. Mr. Bhattacharya testified that complaints were also received from unit owners about the fact that people from the neighbouring housing complex were using the opening in the fence to access PCC #51's visitor parking, which was not permitted. In the circumstances, Mr. Bhattacharya testified that PCC #51 decided to ask the neighbouring housing complex, which actually owns the fence, to repair it and close the opening, which it did.

[141] Before asking that the fence be closed, Mr. Bhattacharya testified that he worked very hard to find a solution that would allow PCC #51 residents to continue using the opening in the fence as a shortcut to the mosque. For example, he proposed that a gate with a lock could be installed in the fence, for use at particularly busy times of the year, such as Ramadan, if someone would take responsibility for opening and closing the gate and monitoring it when open, to ensure that people passed through safely. However, Mr. Bhattacharya testified that no one was willing to do this.

[142] I accept the respondents' witnesses' evidence about the reasons for closing the fence as credible because it was clear, internally consistent, consistent with the documentary evidence, including photographs of the fence, and it made sense. Such evidence establishes that the condominium corporation's decision to have the fence closed was based on the safety and other risks involved in keeping it open, and not on creed, in whole or in part.

[143] During final argument, Mr. Minhas suggested that the concern about the fence only arose after he and the others filed their human rights Applications in November 2013, the implication being that the fence was closed in retaliation. However, this is inconsistent with the submissions that were made by Mr. Minhas and the other parties at the outset of the hearing that the fence was closed some time in 2012, as well as a letter put into evidence by the applicants stating that the fence was closed in December 2012. In any event, even if the fence were closed after the applicants filed their Applications, this alone, taken on its own or with the totality of the evidence, would not lead me to reject the respondents' evidence about why the fence was closed or to find that the decision to close the fence was linked to the applicants' creed.

[144] I can understand that people liked the convenience of a shortcut to the mosque and that they were disappointed when it was closed. However, there is no evidence before me in this case that is capable of supporting what is really a bald assertion that the closure of the fence was based on an anti-Muslim bias on the part of either or both of the respondents. Accordingly, the evidence on this point does not assist the applicants in making out their case.

[145] Likewise, I am not persuaded that the fact that PCC #51's 2010 AGM was held during Ramadan assists the applicants in making out their claim that the decision to hold the special owners' meeting on October 16, 2013 constituted distinct and disadvantageous treatment based on creed.

[146] There is no dispute that the condominium's 2010 AGM was originally scheduled for June 23, 2010, which was not during Ramadan and not a religious holiday for the applicants. However, a few weeks before the June 23, 2010 meeting, a number of unit owners, including Mr. Kamal and Mr. Ali, submitted a petition to the PCC #51 Board of Directors, complaining that the June 23, 2010 AGM was scheduled for a weeknight and demanding that it be rescheduled to a Saturday or Sunday.

[147] Mr. Bhattacharya, who was on the Board of Directors at the time, testified that he regarded this as a stalling tactic. He testified that Mr. Ali and another gentleman were running for election to the Board at the 2010 AGM and he understood that they had not collected enough proxies to get elected, whereas Mr. Bhattacharya and his group had collected more than 100 proxies by that point. He testified that he believed Mr. Ali and the others wanted to delay the AGM so that they would have more time to collect proxies.

[148] In any event, Mr. Bhattacharya testified the need for an AGM was particularly urgent in 2010 because the condominium corporation had not had such a meeting since 2007. Mr. Bhattacharya testified that when he was first appointed to the Board in 2008, he discovered that the previous property manager (not Mr. Bardhi) had failed to maintain and/or refused to provide any of the records PCC #51 needed in order to have an audit done. Moreover, Mr. Bhattacharya testified that the auditor who had audited the accounts for the 2007 AGM had withdrawn his report and resigned, claiming that he had been pressured by the previous Board to engage in "window-dressing". Mr. Bhattacharya testified that it took until 2009 for the Board to gather the records required to have audits done for 2007 and 2008, which the Board intended to present to unit owners at the 2010 AGM.

[149] In addition, Mr. Bhattacharya testified that it would have been difficult and costly

to arrange to have the condominium corporation's lawyer, auditor and property manager attend a weekend meeting. Mr. Bhattacharya testified that the previous two AGMs – in 2006 and 2007 – had been held on weekdays, and he did not think there was a valid issue with holding this AGM on a weekday.

[150] In the circumstances, the decision was made to proceed with the AGM on June 23, 2010, as scheduled.

[151] However, Mr. Bhattacharya testified that the AGM ended up having to be cancelled on the day of the meeting, because a group of unit owners, in which Mr. Kamal and Mr. Ali figured prominently, were shouting and demanding that it be rescheduled to a Saturday or Sunday. He also testified that name cards that had been set out on tables for the meeting had been thrown on the floor. Mr. Bhattacharya testified that there was so much disruption that the Board determined that it could not go ahead with the meeting, and would have to reschedule it to another date. This was confirmed by Mr. Bardhi. He testified that he was shocked by the screaming and behaviour of some unit owners at what was to have been his first AGM since becoming property manager at PCC #51 in 2009.

[152] Mr. Bhattacharya testified that there continued to be an urgent need for an AGM after the June 23, 2010 meeting was cancelled. He testified that the lawyer who was to chair the meeting for PCC #51 proposed August 28, 2010 as an alternate date. Mr. Bhattacharya testified that he knew that date this fell within the month of Ramadan and that he considered whether that would be a problem, as there are a significant number of Muslim families in PCC #51. He testified that he asked a Muslim member of the Board of Directors in place at that time and she told him that it would be fine to hold the AGM during Ramadan. Accordingly, the meeting was scheduled and proceeded on August 28, 2010.

[153] In my view, the evidence about the 2010 AGM also fails to assist the applicants in proving that the scheduling of the special owners' meeting on Eid-ul-Azha constituted distinct and disadvantageous treatment of the applicants because of their creed.

[154] The applicants' own evidence is that, during the month of Ramadan, they as Muslims go about their regular daily activities, such as work, and are not restricted from attending meetings. This was consistent with the information Mr. Bhattacharya received from a Muslim member of the Board of Directors when he sought to clarify whether it would be inappropriate to hold the AGM during the month of Ramadan. In addition, the uncontradicted evidence before me is that a previous PCC #51 Board of Directors comprised of a majority of Muslim directors, and led by a Muslim President, held the 2007 AGM during the month of Ramadan. Taking all of these factors into account, the mere fact that the 2010 AGM was held during Ramadan is not sufficient to establish any anti-Muslim bias on the part of the condominium corporation.

[155] For all of the above reasons, I find that the applicants have not made out their claim that the scheduling of the special owners' meeting on October 16, 2013 constituted distinct and disadvantageous treatment of them by the condominium corporation and/or that PCC #51 was targeting and/or trying to exclude Muslims by holding the meeting when it did. Moreover, to the extent that the applicants claim that the respondents harassed them because of their creed, this claim, which is really indistinguishable from the discrimination claim, must also fail. Just as the evidence fails to establish that the respondents treated the applicants in a disadvantageous manner because of their creed, so too does it fail to establish that the respondents engaged in a course of vexatious conduct towards the applicants because of their creed.

[156] This is not an end to the matter, however. Even though the evidence does not establish that the condominium corporation treated the applicants in a distinct and disadvantageous matter because of their creed, there remains the applicants' argument that its actions had a distinct and disadvantageous effect on them by preventing them from adhering to their religious beliefs, and thereby constituted adverse effect discrimination within the meaning of the *Code*. I now turn to that issue.

Whether holding meeting on Eid ul Azha had a discriminatory effect on the applicants

[157] As noted above, the applicants testified that they were required by their religious

beliefs to attend mosque on the morning of Eid-ul-Azha for prayers; to slaughter an animal such as a lamb or a goat (or arrange to have an animal slaughtered on their behalf); and to divide the meat into three portions, distributing one portion to the less fortunate, one portion to family and friends, and keeping one third to make a feast for one's own family.

[158] The applicants contend that the decision to proceed with the special owners' meeting on October 16, 2013 prevented them, to varying degrees, from fulfilling the above-noted religious obligations, thereby disadvantaging them because of their creed and discriminating against them under the *Code*.

[159] In particular, Mr. Minhas testified that although he went to mosque for Eid-ul-Azha prayers and made his sacrifice that afternoon, the October 16, 2013 special owner's meeting interfered with his ability to distribute his meat. He testified that the meeting also interfered with his ability to share a feast with family members who were visiting on October 16, 2013 for Eid-ul-Azha.

[160] Mr. Ali testified that he went to mosque to pray on Eid-ul-Azha, but was unable to make his sacrifice at an out-of-town slaughterhouse, because he might not have made it back in time for the meeting. Mr. Ali testified that, because he was unable to make his sacrifice, he did not have any meat to distribute for Eid-ul-Azha in 2013.

[161] Mr. Kamal did not attribute the fact that he did not go to mosque for prayers on the morning of Eid-ul-Azha to the special owner's meeting. However, Mr. Kamal testified that the evening meeting prevented him from picking up his meat at the 8:00 or 9:00 p.m. appointment time he was given by the butcher when he had called them around midday on Eid-ul-Azha. While maintaining that the special owners' meeting prevented him from making his sacrifice and distributing his meat on October 16, 2013, Mr. Kamal acknowledged that he fulfilled his religious obligations for Eid-ul-Azha by doing these things the next day, on October 17, 2013.

[162] The condominium corporation submits that the fact that the special owners' meeting was held on October 16, 2013 did not interfere with the applicants' ability to adhere to their religious beliefs and that the applicants could have adhered to the tenets of their faith and attended the October 16, 2013 meeting. To the extent the applicants did not adhere to their religious beliefs on Eid-ul-Azha in October 2013, the condominium corporation argues that this was because of other choices the applicants made or other obligations they had.

[163] In particular, responding to Mr. Ali's and Mr. Kamal's contention that the special owners' meeting prevented them from sacrificing an animal on October 16, 2013 for Eid-ul-Azha (or having one sacrificed on their behalves), PCC #51 submits that this was not because of the owners' meeting, but rather because these applicants chose to spend the afternoon of Eid-ul-Azha strategizing with their lawyer. PCC #51 submits that if the applicants wanted to meet with their lawyer, they could have done so at another time that would not have interfered with their ability to meet their religious obligations.

[164] In addition, in Mr. Kamal's case, the condominium corporation submits that if anything, it was his failure to make timely arrangements for an animal to be slaughtered that interfered with his ability to make his sacrifice and distribute his meat, not the owners' meeting. It argues, based on Mr. Kamal's own testimony, it is clear that he could have obtained and distributed his meat on October 16, 2013, before the 7:00 p.m. meeting, if he had simply made his appointment with the butcher in a more prompt manner, instead of leaving it until the day of Eid-ul-Azha itself.

[165] As for Mr. Minhas, PCC #51 submits that, to the extent he was unable to distribute all of his meat, it was because Mr. Minhas had to and/or chose to work on October 17 and 18, 2013.

[166] PCC #51 submits that what the meeting interfered with, if anything, was the social aspect of Eid-ul-Azha, the evening party with friends and family members. However, insofar as social activities do not fall within the *Code*-protected ground of creed, it argues this does not assist the applicants in making out a *prima facie* case of

discrimination under the *Code*. Relying on *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para. 69, PCC #51 submits that only those practices and beliefs that are religious in nature fall within the ground of creed.

[167] In support of its position in this regard, PCC #51 relies on the statement in the imam's October 30, 2014 letter, which the applicants agreed was accurate, that there are no religious rites during the evening of Eid-ul-Azha. In light of this fact and in the absence of any evidence that socializing with family and friends on the evening of Eid-ul-Azha is religious in nature, the applicants have not made out a *prima facie* case of discrimination on the basis of creed.

[168] Finally, the condominium corporation contends that all three applicants agreed that they could have complied with their religious obligations by sacrificing an animal and distributing the meat on any of the three days of Eid-ul-Azha – October 16, 17, or 18, 2013. Accordingly, even if the applicants were restricted in their ability to make sacrifices and distribute meat on October 16, 2013, because of the owners' meeting, they could have fulfilled their religious obligations on October 17 or 18, 2013, as indeed Mr. Kamal did.

[169] For these reasons, PCC #51 submits that the applicants have failed to establish that the scheduling of the special owners' meeting created a disadvantage for them because of their creed, and thereby failed to make out a *prima facie* case under the *Code*.

[170] In my view, Mr. Kamal and Mr. Ali have clearly failed to establish that they were negatively affected by the scheduling of the special owners' meeting to the extent alleged. For example, I am not persuaded on the evidence that the evening meeting prevented Mr. Kamal and Mr. Ali from making their sacrifices before the meeting, as Mr. Minhas did. In this regard, I do not accept that these applicants were compelled to meet with Ms Bokhari on the afternoon of Eid just because the meeting was that evening. However, it is less clear whether the same could be said of the meeting's impact on the applicants' ability to distribute their meat. There is also the issue whether feasting with

one's family and friends on the evening of Eid-ul-Azha is religious in nature or whether it is a purely social activity, as the respondent contends.

[171] At the end of the day, however, it is not necessary for me to resolve these issues or to determine whether the applicants have made out a *prima facie* case of discrimination under the *Code* in order to decide this case. This is because, assuming, without finding, that one or more of the applicants was disadvantageously affected because of his creed by the scheduling of the special owners' meeting, PCC #51 has established on a balance of probabilities that it accommodated the applicants' creed-based restrictions and/or needs by allowing them to participate in the meeting and vote on the borrowing bylaw by proxy.

[172] As noted above, even if I found that the applicants were disadvantageously affected by the scheduling of the owners' meeting, in the sense that it negatively affected their ability to adhere to the tenets of their faith, a respondent is not liable under the *Code* if it establishes either that it accommodated the applicants' creed-based needs or that such needs could not have been accommodated without undue hardship (s.11). In this case, PCC #51 asserts that it did accommodate the applicants' creed-based needs by permitting them to participate in the October 2013 special owners' meeting and vote on the borrowing bylaw by proxy. I agree.

[173] In a condominium corporation with 169 units, there will almost always be someone who is unable to attend a meeting for *Code*-related reasons, such as disability, family status (i.e. childcare and/or elder care), or creed. The evidence of Mr. Bhattacharya and Mr. Bardhi is that a unit owner who cannot or does not wish to attend a meeting for any reason may appoint any competent adult to act as his or her proxy holder. Mr. Bhattacharya's evidence, which was not disputed by the applicants, was that a proxy holder can attend PCC #51 meetings on behalf of the unit owners whose proxies they hold, speak to issues, ask questions, and vote on the unit owner's behalf in accordance with the proxy form. This was consistent with Mr. Bardhi's evidence on the point. I accept the respondents' evidence on these points, which was straightforward, clear, consistent, and supported by the documentary evidence, as credible.

[174] Based on this evidence, to the extent that the applicants did have a creed-related inability to attend the October 16, 2013 meeting, I find that PCC #51 accommodated them within the meaning of s. 11 of the *Code*.

[175] All three applicants testified that they were against the loan before the meeting and continued to be against it at least until the hearing of the Applications. The applicants could have expressed their opposition to the borrowing bylaw by availing themselves of the proxy system and thereby eliminated any creed-based disadvantage that the applicants might have otherwise experienced as a result of attending the meeting. The meeting information packages sent to unit owners in late September 2013 contained ample information to allow the applicants to determine whether they wanted to vote in favour of or against the borrowing bylaw by proxy. In any event, I agree with PCC #51 that there is no allegation or evidence in this case that the applicants needed to attend the meeting in person because they did not know how they wanted to vote on the borrowing bylaw.

[176] Nor did the applicants identify any other reason why the proxy system failed to meet their creed-based needs. The only creed-related disadvantage that the applicants claim to have experienced in this case is that attending the special owners' meeting did not leave them with enough time to fulfill their religious obligations for Eid-ul-Azha. However, the applicants could have avoided this disadvantage by simply voting on the bylaw by proxy.

[177] The applicants were clearly not satisfied with this option. However, this in my view is a reflection of the fact that the applicants were not really seeking an accommodation that would allow them to participate in the decision-making process about the loan; they were seeking to prevent that process from happening, because they were not in agreement with the majority's decision to take out a loan.

[178] The applicants are certainly entitled to their opinion about the need for the loan and the repairs. However, their position that the only acceptable course of action, once it was known that October 16, 2013 would be Eid-ul-Azha, was to reschedule the

meeting represents a fundamental misunderstanding about the condominium corporation's obligations under the *Code*. In this regard, I note that at one point Mr. Ali submitted that, while allowing owners to vote by proxy would be a reasonable accommodation of "personal" *Code*-related reasons for being unable to attend a meeting, such as disability or childcare, a creed-based inability to attend a meeting could not be similarly accommodated. I have to disagree with this submission, as it is well established that there is no hierarchy of *Code* grounds: *Canada (Attorney General) v. Johnstone*, 2014 FCA 110 at para. 81. Where an individual is disadvantaged with respect to a particular social area because of a *Code* ground, whether it is disability, family status or creed, the respondent's obligation is essentially the same. Specifically, the respondent has a duty to accommodate the *Code*-related needs or restrictions, up to the point of undue hardship, with the goal of removing the disadvantage.

[179] Applying this to the case at hand, assuming without finding that the applicants had a creed-related inability to attend the October 16, 2013 meeting and to vote on the borrowing bylaw in person, PCC #51 had a duty to accommodate the applicants by enabling them to participate in the decision-making about the loan in some other way. This the condominium corporation did by allowing the applicants to vote by proxy.

[180] At one point during the hearing, Mr. Minhas agreed that the proxy system would have been a reasonable accommodation of his creed-based inability to attend the meeting, provided that his proxy was counted. Mr. Ali and Mr. Kamal took the position that the option to participate in the October 16, 2013 meeting and vote by proxy was not a suitable accommodation, because of misuse of the proxies by the respondents. However, there is no credible evidence that proxies were misused by the respondents.

[181] One basis for Mr. Kamal's and Mr. Ali's submission that proxies were misused by PCC #51 is their contention that the Board of Directors attempted to use the proxy forms to get themselves re-elected at the October 16, 2013 meeting. There is no dispute that when it was brought to Mr. Bhattacharya's attention that rumours were circulating that the Board intended to hold a secret election at the special owners' meeting, he posted a notice on October 8, 2013 clarifying that this was not the case,

and that the only voting would be on the borrowing bylaw. However, Mr. Kamal maintains that this was simply because the Board got “caught” and could not cure PCC #51’s misuse of the proxies.

[182] As I have explained above, there is no merit to the allegation that the PCC #51 Board was trying to hold a secret election of directors at the October 16, 2013 meeting. Accordingly, this is not a basis to find that the proxy system was not an appropriate accommodation of the applicants’ *Code*-related inability to attend the special owners’ meeting.

[183] It was also alleged that Mr. Bardhi and/or PCC #51 “misused” proxies at the October 16, 2013 by refusing to count proxies that were against the borrowing bylaw, particularly the 97 “no” proxies that Mr. Ali allegedly gave to A.S. (and leaving aside the fact that Mr. Ali initially testified that it was 79 proxies and made no mention of giving them to A.S.). However, this is not borne out by the evidence.

[184] Mr. Bardhi testified that he received a number of “no” proxies from A.S., after the October 16, 2013 meeting was well underway, in the presence of the scrutineers who were appointed to oversee the vote and the lawyer who had been retained to chair the meeting. Mr. Bardhi testified that it was the chair and the scrutineers, not Mr. Bardhi and not the Board of Directors, who were involved in counting the votes and deciding which proxies were valid. (Mr. Bardhi testified that in many cases two proxies had been submitted for the same unit and the chair and the scrutineers had to go through them carefully to ensure that the later-dated proxy was the one that was counted.) Mr. Bardhi was adamant that there was no refusal to accept or count any valid proxies at the October 16, 2013 meeting.

[185] Mr. Bardhi’s evidence about the use of proxies at the October 16, 2013 meeting was detailed, clear, internally consistent, and consistent with the overall evidence, including Mr. Bhattacharya’s evidence that PCC #51 retained a lawyer to chair the October 2013 meeting to ensure that everything was done according to legal requirements and the documentary evidence, including minutes of the October 2013

meeting and a number of “no” proxies submitted by the respondent, listing A.S. as the proxy holder. Accordingly, I accept Mr. Bardhi’s evidence in this regard as credible. I note that Mr. Bardhi’s evidence was also essentially uncontradicted. Based on the outcome of the vote, Mr. Ali stated that PCC #51 must have improperly excluded most of the “no” proxies he gave to A.S. However, this was really in the nature of a bald assertion. By his own admission, Mr. Ali had no direct knowledge of what happened with the proxies after A.S. allegedly took them from him. Nor was he in a position to speak to why some proxies may have been found to be invalid by the chair, who was responsible for making such determinations: *YCC No. 42 v. Gosal*, 2014 ONSC 2035. Moreover, the inconsistency in Mr. Ali’s position with respect to the number of proxies he had in his possession casts doubt on the reliability of this aspect of his evidence.

[186] In the circumstances, there is no basis to find that proxies were improperly excluded from the vote count or otherwise misused by PCC #51. This is also not a reason to conclude that the proxy system that was in place for the October 16, 2013 meeting was not an appropriate accommodation of the applicants’ *Code*-related needs.

[187] In sum, if the applicants were unable to attend the October 16, 2013 special owners’ meeting because of their creed, I find that PCC #51 accommodated such creed-related restriction by enabling the applicants to participate in the meeting and vote by proxy. Accordingly, there was no infringement of the applicants’ rights under the *Code*.

[188] For all of the above reasons, the Applications are dismissed.

Dated at Toronto, this 30th day of September, 2016

“Signed by”

Sheri Price
Vice-chair