CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 18, 2021
CASE: 2020-00340N
Citation: Kong v. Toronto Standard Condominium Corporation No. 1959, 2021 ONCAT 96

Order under section 1.44 of the *Condominium Act, 1998.*

Member: Laurie Sanford, Member

The Applicant,
Merg Kong
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 1959
Represented by Bradley Chaplick, Counsel

The Intervenor,
Toronto Standard Condominium Corporation No. 1862
Represented by Evan Holt, Counsel

Hearing: Written Online Hearing and Video Conference Hearing – June 26, 2021 to September 27, 2021

REASONS FOR DECISION

A. BACKGROUND AND PROCESS

[1] The hearing in this matter originally began in December, 2020. In a ruling on a preliminary motion, I dismissed the application in a decision dated March 4, 2021 and reported as *Kong v. Toronto Standard Condominium Corporation No. 1959*, 2021 ONCAT 18 (CanLII). The ground for dismissal was that the statutory limitation period for bringing the application had passed.

[2] On consent of the parties, the Divisional Court, in Court File No. 280/21, ordered the dismissal decision be set aside and that the matter be remitted to the Tribunal for a determination of the remaining issues in the Application, without reference to the limitation period.

[3] The remitted proceeding commenced on June 26, 2021 as a written hearing. Ms. Kong, the Applicant, requested an oral hearing of the testimony and closing submissions as an accommodation for her disability. The hearing was accordingly scheduled via video conference for September 14, 15, 22, 23 and 27, 2021. The hearing commenced on September 14th and continued on September 15th but did not proceed on September 22nd due to the non-appearance of Ms. Kong. The hearing resumed on September 23rd and concluded on September 27th.

[4] On September 23, 2021, during the cross-examination of the last of Toronto Standard Condominium No. 1959's ("TSCC1959") witnesses and after approximately two hours of cross-examination, I directed Ms. Kong to finish her cross-examination in 20 minutes. I directed this because Ms. Kong was persistently returning to subject matters that had been previously ruled either irrelevant or otherwise objectionable and because Ms. Kong was ignoring directions to move to other subjects.

[5] In addition to the exhibits being uploaded to the Tribunal Online Dispute Resolution, or CAT-ODR, system, one of the parties prepared exhibit books which were used during the video conference hearing. To avoid confusion, the exhibits marked in the CAT-ODR system are labelled to co-relate to the exhibit books and both citations are used in references to the exhibits in this decision.

B. OVERVIEW

[6] Ms. Kong is a unit owner in TSCC1959. She used to charge her electric vehicle in the visitor parking area which TSCC1959 shares with Toronto Standard Condominium Corporation No. 1862 ("TSCC1862"), the Intervenor in this case. The shared parking is managed by a Shared Facility Committee ("SFC") comprised of representatives of the two condominium corporations. The SFC had allowed residents to use any of the twelve charging stations located in the visitor parking area until June 2016 when the SFC determined that the respective Declarations of the two condominium corporations prohibited residents from using the visitor parking. The Declarations provided that changing that provision would require the approval of 80% of the owners. Convinced that it was unlikely to obtain the necessary approval, the SFC moved to stop residents from using the charging stations and, effective March 2017, Ms. Kong was advised that she could no longer have access to them.

[7] Ms. Kong brings this Application because she wants to return to using the charging stations in the visitor parking area. At a minimum, she requests that she be permitted to continue to use the existing L1, or 120-volt, charging stations. Her preference would be to have the SFC upgrade these to an L2, or a 240-volt,

Electric Vehicle Charging Station ("EVCS") and permit her and the other residents to use these communal EVCSs. In the further alternative, she wants TSCC1959 to install, at its expense, an EVCS in her parking space, for her exclusive use.

[8] Ms. Kong cites multiple grounds to support her request. She submitted that sections 24.1 and 24.3 of Ontario Regulation 48/01 (the "Regulation") to the *Condominium Act, 1998*, S.O. 1998, c.19 (the "Act") "repeal" the restriction on the visitor parking area. She submitted that the *Accessibility for Ontarians with Disabilities Act,* 2005, S.O. 2005, c. 11 (the "AODA") imposes on the SFC or TSCC1959 the obligation to restore her access to the charging stations in the visitor parking. It is unclear whether she is claiming that the AODA also imposes an obligation to upgrade to an L2 EVCS in the visitor parking area. She submitted that she is entitled to an accommodation due to a disability under the *Human Rights Code,* R.S.O., c. H.19 (the "Code"). Ms. Kong cited numerous other factors which she submitted imposed either a legal or moral obligation on the SFC or TSCC1959 to accede to her requests. A representative sample of these will be considered below. TSCC1959 and TSCC1862 contest each of her claims and submit that TSCC1959 has offered Ms. Kong a reasonable accommodation which she has refused.

[9] For the reasons set out below, I am dismissing Ms. Kong's application. Sections 24.1 and 24.3 of the Regulation do not repeal the requirement for an approval by 80% of owners to change the restrictions on the visitor parking area and even if they did, they do not impose an obligation on the SFC to restore Ms. Kong's access to the area or to upgrade to an L2 EVCS. The AODA does not apply in this case. Ms. Kong's request for an accommodation under the Code due to a disability is dismissed for three reasons. First, she has not demonstrated that she is being discriminated against because of a disability. Second, even if Ms. Kong had demonstrated discrimination, she has not demonstrated that she is seeking an accommodation due to that disability. I find that she is seeking an accommodation due to her choice of an electric vehicle, a choice that she has not demonstrated is related to her disability. Third, even if Ms. Kong had demonstrated that the accommodation she seeks was due to her disability, TSCC1959 has offered her a reasonable accommodation, which she has refused. The other factors cited by Ms. Kong are either irrelevant or do not impose an obligation to accede to Ms. Kong's requests. TSCC1959 and TSCC1862 have requested the opportunity to make submissions as to costs and the Order sets out the method for making these submissions.

C. ISSUES & ANALYSIS

[10] The issues in this case may be summarized as follows:

1. Does the Tribunal have the jurisdiction to hear this matter?

2. Do sections 24.1 and 24.3 of the Regulation apply to this matter?

3. Does the AODA impose a legal obligation to give Ms. Kong access to a communal EVCS?

4. Is Ms. Kong entitled either to have access to a communal EVCS or to a dedicated EVCS as an accommodation under the Code?

    i. Does Ms. Kong have a disability?

    ii. Is Ms. Kong being discriminated against on account of her disability?

    iii. Has she been offered a reasonable accommodation?

5. Do any of the other factors cited by Ms. Kong impose a legal obligation on either TSCC1959 or TSCC1862 to accede to Ms. Kong's request?

Issue 1. Does the Tribunal have the jurisdiction to hear this matter?

[11] None of the parties contested the Tribunal's jurisdiction to hear this matter. TSCC1862, which had indicated it was prepared to bring a motion on the question, withdrew the motion when the case was remitted to the Tribunal. The Tribunal is raising the issue of its jurisdiction because the grounds for that jurisdiction are tenuous. Jurisdiction is granted under Ontario Regulation 179/17 to the Act. Subsection 1(1)(d) sets out a number of disputes over with the Tribunal has jurisdiction, if these arise with respect to specific provisions of the declaration, by-laws or rules of a corporation. Subparagraph (ii) includes "Provisions that prohibit, restrict or otherwise govern an automobile. . . in a unit, the common elements or the assets, if any of the corporation." Subparagraph (iii) includes "Provisions that prohibit, restrict or otherwise govern. . . any part of a unit, an asset or the common elements, that is intended for parking or storage purposes."

[12] It is not clear that either of these provisions extend the jurisdiction of the Tribunal to deal with disputes over EVCSs. While it is true that section 24.1 of the Regulation deems sections relating to EVCSs to be included in the declarations of condominium corporations, it is less clear that this means that provisions relating to EVCSs should now be considered to be provisions of a declaration that "prohibit, restrict or otherwise govern" either automobiles or parking. Even if the Tribunal did have such a jurisdiction, Ms. Kong is arguing that Sections 24.1 and

24.3 of the Regulation somehow repeal the visitor parking provisions of the Declarations of the two condominium corporations. As will be discussed below, they do not. Even if the visitor parking provisions were repealed, it does not follow that either of the condominium corporations would be obliged by their respective Declarations to grant Ms. Kong's requests. Ms. Kong had earlier argued that sections 24.1 and 24.3 of the Regulation did impose this obligation but she appears to have abandoned that argument at the hearing. Thus, Ms. Kong is not arguing that the respective Declarations of the condominium corporations govern this application.

[13] It appears that the substance of Ms. Kong's application is a request for an accommodation under the Code rather than a dispute over the provisions of the condominium corporations' Declarations. The Supreme Court of Canada in the *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC14, [2006] 1 SCR 513 ruled that Tribunals like this one have the jurisdiction to consider how the provisions of the Code might apply, but only in the context of a matter that is otherwise properly before the Tribunal. If the Tribunal lacks the jurisdiction to deal with a matter under the Act or any of its regulations, it cannot claim jurisdiction solely on the basis of a dispute relating to the provisions of the Code.

[14] Offsetting these concerns is the Order of the Divisional Court remitting the matter to this Tribunal "for determination of the remaining issues in the Application other than the limitation period . . . ". I understand from this that the Divisional Court's intention was that this application be dealt with on its merits. It is on this basis that I am proceeding.

Issue 2. Do Sections 24.1 and 24.3 of the Regulation apply to this matter?

[15] Sections 24.1 and 24.3 of the Regulation address the installation of EVCSs in a condominium by a condominium corporation. Section 24.1 deems the provisions of section 24.3 to be included in the declaration of a condominium corporation. Section 24.3 sets out the procedures to be followed if a condominium corporation wishes to install an EVCS and claim an exemption from certain statutory provisions of the Act relating to changes to common elements.

[16] The SFC, at some point before June 2016, permitted residents with electric vehicles to use charging stations located in the visitor parking "on a temporary trial basis pending a review of the corporations' rules, policies and procedures."[1] After reviewing the respective Declarations of TSCC1959 and TSCC1862, the SFC

---

[1] Exhibit 1R, Book 2, Tab 12.

determined that the Declarations prohibited residents from parking in the visitor parking areas. The SFC moved to stop the practice of residents using the charging stations in the visitor parking area. Ms. Kong engaged in extensive email communications with the SFC in the winter of 2016 and again in June, 2016 before being notified that February 28, 2017 would be the last day on which she could use the charging stations in the visitor parking area.[2]

[17] In this proceeding, Ms. Kong initially took the position that sections 24.1 and 24.3 of the Regulation somehow imposed on one or both of the condominium corporations, or their SFC, an obligation to upgrade its existing infrastructure to L2 EVCSs, that is from 110-volt chargers to 240-volt chargers, or to otherwise install an EVCS. She appears to have abandoned this argument at the hearing. Her position now is that section 24.3 repeals the restriction on visitor parking that currently governs the SFC. It is not clear if Ms. Kong's position is that the restriction on who may park in the visitor parking places is repealed or that the requirement to have approval of 80% of owners to a change in the visitor parking provisions is repealed. To ensure that I have properly captured Ms. Kong's argument, I have considered both provisions of the Regulation in light of her original position and both interpretations of her current position.

[18] I conclude that sections 24.1 and 24.3 of the Regulation do not impose on either of the condominium corporations or their SFC any obligation to either install an EVCS or to upgrade the existing L1 charging stations to L2 EVCSs. The sections set out procedures to be followed if a condominium corporation wishes to install an EVCS without triggering the requirements in the Act relating to changes to the common elements. However, these sections do not create an obligation to undertake an EVCS installation. Nor do these sections operate to repeal either the prohibition on residents using the visitor parking area or the requirement for approval by 80% of the owners to change this prohibition which is currently contained in the Declarations of the condominium corporations. Ms. Kong is mistaken in believing otherwise.

Issue 3. Does the AODA impose a legal obligation to give Ms. Kong access to a communal EVCS?

[19] Ms. Kong asserts that the AODA imposes an obligation on either TSCC1959, TSCC1862 or the SFC to upgrade the communal charging stations in the visitor parking area to L2 EVCS and to permit access to them by residents and visitors. She did not point to any particular provision or provisions of the AODA that

---

[2] Exhibit 11R, Book 2, Tab 11; Exhibit 13R, Book 2, Tab 13.

imposes this obligation nor have I been able to find one. TSCC1959 introduced an extract from "A Guide to the Integrated Accessibility Standards Regulation – Design of Public Spaces Standard". [3] This guide states, "the requirements for accessible parking will apply to visitor/guest spaces only and not to other parking spaces in parking facilities for employees or unit owners/tenants in multi-unit residential housing, such as apartment, townhouse or condominium. Landlords and employers already have a legal duty to accommodate employees or unit owners/tenants with disabilities under the Ontario Human Rights Code." (Emphasis in original.) The AODA sets out requirements for accessible parking in the visitor parking area but it does not dictate who may have access to the visitor parking. I conclude that the AODA has no application to this case.

Issue 4. Is Ms. Kong entitled either to have access to a communal EVCS or to a dedicated EVCS as an accommodation under the Code?

Issue 4 i. – Does Ms. Kong have a disability?

[20] Ms. Kong introduced a "Policy on ableism and discrimination based on disability", approved by the Ontario Human Rights Commission, June 27, 2016[4] (the "OHRC Policy"). The OHRC Policy contains an excellent overview of the Code provisions concerning disabilities and how they operate. The OHRC Policy is easily accessible by laypeople and I will refer to it in considering how the Code applies in the circumstances of this case.

[21] The OHRC Policy summarizes the Code as follows: The Code "protects people in Ontario with disabilities from discrimination and harassments under the ground of 'disability'."[5] The protection extends to specific areas of daily life including "housing", "receiving services" or "using facilities". The first step in determining whether and how the Code applies in this case is to determine if Ms. Kong has a disability. Ms. Kong maintains that she does. TSCC1959 and TSCC1862 dispute her claim.

[22] Ms. Kong introduced a letter from a Dr. Jussaume dated March 15, 2017.[6] The letter says that Ms. Kong has a "restricted range of motion and mobility" due to several conditions that affect her back and produce muscle weakness and reduced dexterity in the hands that "can be problematic when handling or lifting objects of

---

[3] Exhibit 16R, Book 2, Tab 16.
[4] Exhibit 37A, Book 1, Tab 36.
[5] Exhibit 37A, *Supra,* p.4
[6] Exhibit 8A, Book 1, Tab 8.

varying weight, size or combination.” The doctor states that “bending and lifting objects on a regular basis will exacerbate the spine and neck (*sic*).” Ms. Kong also introduced a letter from a Dan Cojocaru dated July 19, 2021.[7] Mr. Cojocaru does not identify himself as a doctor, although he refers to his “medical practice” and writes on the letterhead of “hs health source medical clinic”. Mr. Cojocaru refers to Ms. Kong as his patient and states that “She has a medical condition which impairs her ability to bend, lift, twisting”(*sic*). He continues, “She would benefit from an accessible (wall-mounted) electric vehicle charger as part of her treatment program to avoid aggravating her condition.”[8]

[23] Ms. Kong testified that bending and twisting cause her discomfort as does lifting objects that weigh more than 10 pounds from the ground. She also suggested that she suffers from a 90% disability. Her evidence for this latter suggestion was a blank Disability Tax Credit Certificate and the first page of a two-page letter to her from the Canada Revenue Agency which states, “We have completed our review and determined that you are eligible for the [disability tax credit] for 2003 and future years.” The letter adds, “In the meantime, if your medical condition improves to the point that your impairment would no longer meet the eligibility criteria for the disability tax credit, you must let us know.” The extract from the letter does not say what the basis for the disability tax credit is and does not specify the extent of the disability.

[24] TSCC1959 and TSCC1862 question whether Ms. Kong is disabled. TSCC1959 introduced a video from the security camera in its parking garage that shows Ms. Kong carrying golf clubs across the area of the garage covered by the camera. Ms. Kong submits that she was carrying light weight clubs in a back harness that spread the weight across her back. Mr. James McGowan, president of the board of directors of TSCC1959, testified that he had seen Ms. Kong carry her clubs up a hill at a golf club on one occasion. In cross-examination, Mr. McGowan was asked whether he could see the specific back harness that Ms. Kong was using. It appeared to him that she was carrying the clubs over her shoulder in the usual way, but he conceded that he could not see her back.

[25] I am troubled by the use of security camera footage in these types of cases. It appears to be an invasion of an owner’s privacy for reasons that are unrelated to the security of the building or its residents. In this case, I am giving the footage no weight. I accept Ms. Kong’s statement that she carries light weight clubs and uses a special harness that enables her to carry the clubs without discomfort. I also find

---

[7] Exhibit 30A, Book 1, Tab 30.
[8] Exhibit 30A, *Supra.*

that Mr. McGowan's testimony is not persuasive evidence of Ms. Kong being without disability. He concedes that he is not a medical doctor and he did not see the specific harness that Ms. Kong uses and did not testify as to the weight of the clubs. I accept the letter from Dr. Jussaume as evidence of a disability. The letter from Dan Cojocaru is less persuasive. He is not clearly identified as a doctor and his specific reference to the benefits of having a wall mounted EVCS is made without any suggestion that he has considered any other treatment options. I accept Ms. Kong's testimony that she experiences discomfort when bending, twisting or lifting weights over 10 pounds from the ground.

Issue 4 ii. – Is Ms. Kong being discriminated against on account of her disability?

[26] Ms. Kong submits that because she has a disability, either TSCC1959 or the SFC is obliged to accommodate her disability to the point of undue hardship. That is not what the Code says. The Code protects people from discrimination on the basis of a disability in selected areas, including "receiving goods, services and using facilities" and "housing".[9] Before there can be a discussion of Ms. Kong's entitlement to an accommodation, she must first demonstrate that she is being discriminated against on account of her disability.

[27] Both condominium corporations referred to the case of *Taite v Carleton Condominium Corporation No. 91,* 2014 HRTO 165. In that case, Mr. Taite experienced neck pain and a reduction in his mobility. He chose to drive a Ford 150 Truck, an over-size vehicle, because he felt strongly that it best suited his needs. There was no compelling medical evidence supporting his choice. The truck was too large to fit into the underground parking of his condominium and he sought the accommodation of allowing him a parking space above ground and near the entrance to the condominium. The Tribunal dismissed the application in a preliminary motion as showing no reasonable prospect of success. The Tribunal found that the principles of accommodation and of discrimination are intertwined in the Code, in the following analysis:

> The duty to accommodate is not a free-standing obligation under the *Code.* In other words, while(*sic)* the *Code* prohibits is discrimination, it does not require accommodation in the absence of discrimination. As the Tribunal pointed out in *Baber v. York Region District School Board,* 2011 HRTO 213 at para. 90 an applicant who claims a breach of a duty to accommodate is really claiming: (a) that he has experienced discrimination because of a disability; and (b) that the respondents cannot justify the discrimination by showing that the applicant could not be accommodated without undue

[9] Exhibit 37A, Book 1, Tab 36, p. 15

> hardship. . . (para 52) . . . .
>
> Importantly, the purpose of the *Code* is not to accommodate individuals' preferences: *Akash v. Toronto Transit Commission,* 2012 HRTO 677. Thus, to establish a *prima facie* case of discrimination, it is not sufficient for the applicant to establish that his preference is to drive a particular vehicle. Nor is it not (*sic)* sufficient for him to argue that (*sic)* has a disability and that, because of his disability, he prefers to drive a particular vehicle. Rather, to establish a *prima facie* case, the applicant must show not just a preference, but a disability-related reason behind his choice of vehicle. (para 56)

[28] In the present case, Ms. Kong is not being discriminated against regarding her housing. She is not claiming that her access to her condominium unit or her parking space is impeded, either directly or indirectly. What has happened here is that Ms. Kong, together with a subset of TSCC1959 unit owners, that is those who drive electric vehicles, were granted, on a trial basis, access to the charging stations in the visitor parking area to charge their electric vehicles. When it became clear to the SFC that allowing the access was a breach of the Declarations of TSCC1959 and TSCC1862, the SFC moved to end the access. Ms. Kong and every other resident who was using the charging stations had to stop. There was no direct discrimination in that decision.

[29] The Code recognizes other forms of discrimination, including what is called "adverse effect discrimination"[10]. This form of discrimination may occur when "seemingly neutral rules, standards, policies, practices or requirements have an 'adverse effect' on people with disabilities.[11] It might be argued that the denial of the charging service had an unequal effect on Ms. Kong because of her disability but that argument stretches the concept of discrimination beyond what the Code intends. The denial of the charging service affects Ms. Kong only insofar as she chooses to drive an electric vehicle and would prefer to charge her vehicle in the parking garage. Ms. Kong has not produced any persuasive evidence that the choice of vehicle and the preference for where to charge it are connected to her disability. The statement by Mr. Dan Cojocaru that Ms. Kong would benefit from a shoulder height EVCS is not sufficient evidence of a connection between her disability and her choice of an electric vehicle to support a request for an accommodation. Ms. Kong has failed to show that she is being discriminated against on the basis of her disability.

[30] By the same token, Ms. Kong has not shown that she is seeking an

---

[10] The Code, s.11.
[11] Exhibit 37A, *Supra,* p. 22.

accommodation on account of her disability. In this case, Ms. Kong claims an accommodation consisting of permitting her to go back to using the charging stations in the visitor parking to charge her electric vehicle, either with or without an upgrade to an L2 EVCS or, in the alternative, having TSCC1959 install, at its expense, an EVCS in Ms. Kong's parking space for her exclusive use. What Ms. Kong seeks is not an accommodation for her disability but an accommodation for her choice of an electric vehicle and her preference to charge that vehicle in the parking garage.

[31] Ms. Kong submitted that she had been discriminated against in her treatment by the SFC and TSCC1959. Her testimony was that she requested a meeting with the SFC at the outset of this matter and was rebuffed. A witness for TSCC1959 testified that the SFC had agreed to meet with Ms. Kong but that she began to introduce stipulations as to who should attend the meeting. The SFC became convinced that Ms. Kong wanted to meet to advocate for a communal charging solution in the visitor parking area. As that was not an option, the meeting was cancelled. Ms. Kong also submitted that she had been discriminated against in the current work that TSCC1959 is doing on the new proposal for an EVCS, which will be discussed below. She argued that her qualifications as an Information Technology worker were comparable to the qualifications of the resident with whom the Board is working. Mr. McGown testified that the Board lacked confidence in Ms. Kong but had confidence in the resident they had chosen to work with on the various proposals despite the fact that he is not an electrical engineer. In both these cases, the discrimination about which Ms. Kong complains, even if it were proven, is not discrimination in the sense that the term is used in the Code; it is not discrimination on a protected ground.

Issue 4 iii. – Has Ms. Kong been offered a reasonable accommodation?

[32] In light of the above findings, it is not necessary to consider whether Ms. Kong has been offered a reasonable accommodation. However, I am doing so in part for the sake of completeness and in part in the hopes that it will provide a path forward for the parties.

[33] Ms. Kong's preferred solution for charging her vehicle remains communal access to an L2 charging station installed by either TSCC1959 or the SFC, at their expense, and available to residents and visitors for a usage fee. Ms. Kong currently uses a portable electric charging device to charge her vehicle in the parking garage. The portable charging device weighs more than 10 pounds, in Ms. Kong's testimony, and causes her discomfort in lifting it from the floor. TSCC1959 has suggested a lighter cable might reduce the weight of her portable charging

station. Alternatively, TSCC1959 has suggested installing, at her expense, a shelf or stand in her parking space on which to place the portable charging device. TSCC1959 introduced no evidence as to the feasibility of either of these options and Ms. Kong rejected the suggestion of a shelf or stand because of her concern about the security of the device if it is left in the garage. There is insufficient evidence to demonstrate whether either of these suggestions would constitute a reasonable accommodation.

[34] Ms. Kong raised the possibility of her charging her vehicle at a public charging station. She dismissed this possibility on the grounds that the current COVID-19 pandemic made it unsafe for her to handle communal charging equipment. This position is obviously inconsistent with her preference for communal charging stations in the visitor parking space but she did not explain the inconsistency.

[35] The option that TSCC1959 initially offered Ms. Kong was to install, at her expense, a stand-alone charging station in her exclusive use parking space. This option was modified during the mediation phase of this proceeding. The offer made to Ms. Kong, which will be referred to as the “EVdirect Proposal”, was to have TSCC1959 install electric vehicle charging infrastructure to support up to 20 vehicles. Ms. Kong would pay 1/20 of the cost of this infrastructure, together with the “last mile cabling” from the electrical panel to Ms. Kong’s parking space, the charging station itself and the equipment needed to install it. EVdirect provided an estimated cost for this proposal to Ms. Kong of $6,600[12].

[36] Ms. Kong acknowledged, during cross-examination, that an EVCS installed in her parking space for her exclusive use would be satisfactory to her. However, she went on to testify that she would not be satisfied with that solution if it was installed at her expense. She did not say she could not pay for this installation or that it would be a financial hardship for her or that her unwillingness to pay had any connection with her disability. She did not respond when asked during cross-examination why it was fair for the other owners in TSCC1959 to bear the cost of a solution over which she would have exclusive access.

[37] Ms. Kong rejected the EVdirect Proposal. She raised a number of objections to it. She submitted that she did not trust TSCC1959 to safely maintain the infrastructure which they would install. She appeared to base this concern on a wire which she saw crossing the ceiling of the parking garage. She provided no evidence that this wire breached any safety codes beyond her assertion that it did. Nor did she explain the inconsistency between her concern about TSCC1959

---

[12] Exhibit 5R, Book 2 Tab 5; Exhibit 6R, Book 2, Tab 6.

maintaining the EVCS infrastructure if she had to pay her share of it and her satisfaction with an EVCS solution that saw TSCC1959 both install and maintain the EVCS, at its expense. Ms. Kong submitted that she would be unable to install the EVCS in the common areas in or adjacent to her parking space. However, a letter from the SFC to Ms. Kong dated June 7, 2016 states, “it is recommended that you arrange to have a separately-metered charging station that, with approval from the Board of TSCC1959, may be affixed to the common elements adjacent to your parking unit . . . .”[13]. Ms. Kong did not explain why she had not approached TSCC1959 for details as to where in her parking space or the area adjacent to it she might install an EVCS, or part of it. She objected to the EVdirect Proposal because she submitted that the estimate of the “last mile” cabling was too low. However, she produced no evidence that she had raised these concerns with either TSCC1959 or EVdirect or that she had requested a more detailed estimate.

[38] Ms. Kong also testified that she rejected the EVdirect Proposal because she had concerns about the “pre-approved agreement” that TSCC1959 submitted to her. She was concerned that the indemnity provision would hold her liable for things beyond her control. However, the indemnity covers only the “Installation”, a defined term meaning, “the Owner’s EVCS and any addition, alteration or improvement to the common elements that results from or relates to the Owner setting up an EVCS in the Owner’s Parking Unit”. Ms. Kong introduced no evidence that she had approached TSCC1959 with her concerns about the agreement or had attempted to negotiate the wording that may have concerned her.

[39] Another concern that Ms. Kong raised about the EVDIrect Proposal was that it was potentially unfair to other residents. Both she and a witness on her behalf pointed to the possibility of higher costs and longer charging times being incurred by people whose parking spaces were further away from the charging panel and by those people who wanted to access the system after the 20-vehicle capacity had been reached.

[40] TSCC1959 submits that the EVdirect Proposal is no longer available for Ms. Kong to accept. I conclude that while the EVDirect Proposal did not address all of Ms. Kong’s concerns, it was on its face a reasonable solution. Ms. Kong rejected the EVdirect Proposal without attempting to raise her concerns with TSCC1959 or permitting it to address them. Her testimony suggests that the EVdirect Proposal would have been satisfactory to her had TSCC1959, and the other condominium owners, borne the cost. Even if TSCC1959 had been under an obligation to offer

---

[13] Exhibit 9R, Book 2, Tab 9.

Ms. Kong a reasonable accommodation, her rejection of the EVdirect Proposal would have satisfied that obligation.

[41] Mr. McGowan testified that in part because of its experience with Ms. Kong, the Board decided in the spring of 2021 to seek out other options to provide EVCS solutions to its residents. The Board is currently working with four potential suppliers. At least one proposal is for a hub that would serve up to 240 vehicles. This larger capacity would appear to at least partially address Ms. Kong's concern about unfairness to later adopters. The estimated cost of these various proposals would be, in Mr. McGowan's testimony, between $5,000 and $9,000. Mr. McGowan testified to his understanding that the Canadian Government was planning to introduce a subsidy for EVCSs in multi-residential unit buildings that might offset part of the cost. While TSCC1959 would not commit to a specific time for the introduction of its new EVCS offer, my understanding is that the goal is to have the offer presented to the owners in the winter or spring of 2022.

[42] Today, Ms. Kong appears to have two possible permanent solutions to charge her electric vehicle in the parking garage without discomfort. She has the choice of either requesting a stand-alone solution for her parking space at her own cost, or waiting until the new EVCS offer is available from TSCC1959. The TSCC1959 offering would permit the sharing of some part of the infrastructure costs among all EVCS users.

Issue 5. – Do any of the other factors cited by Ms. Kong impose a legal obligation on either TSCC1959 or TSCC1862 to accede to Ms. Kong's request?

[43] Ms. Kong raised multiple other factors which she submitted created or supported a legal or moral obligation on the part of the condominium corporations to grant her request. Below are some examples of the factors she cited. She referred to the LEED standards as evidence of the requirement to upgrade some of the electric vehicle chargers to L2 chargers. LEED is a widely-used green building rating system. Mr. McGowan testified that TSCC1959 had obtained a "Silver" rated LEED certification but had done so without reference to any electric vehicle charging station. There is no LEED obligation to upgrade to an L2 charger, he stated in his testimony.

[44] A witness for TSCC1959 testified that to prevent people from using the charging stations in the visitor parking area, the SFC had locked all of the chargers. Ms. Kong pointed to the fact that a visitor in the visitor parking space had charged his or her electric vehicle there, using an unlocked charger. The witness for TSCC1959 testified that no one had given permission for the charger to be unlocked but that it was possibly left unlocked by accident during some work being

done in the area. Ms. Kong appeared to be suggesting that this either showed inadequate security or a willingness to bend the rules for other people. An isolated incident shows neither of these things nor are they relevant to this case.

[45] Ms. Kong noted that in correspondence with TSCC1959 about a van with a disabled sign parking in an area next to the accessible parking space and possibly impeding access to an entrance, TSCC1959 had referred to a moral obligation to accommodate the handicapped driver by permitting this to occur in this specific situation. Ms. Kong made the argument that if TSCC1959 had a moral obligation to bend the rules here, it ought to do so in her case. This argument is unpersuasive. Apart from the obvious fact that a moral obligation is not necessarily the same as a legal one, there is no evidence of equivalency between Ms. Kong's circumstances and her proposed accommodation and those of the driver of the van. The fact that one person is accommodated in a particular situation does not mean that another person must receive the accommodation that they demand in another. Each case is to be assessed on its own merits.

[46] Ms. Kong referred to a notice issued by TSCC1959 advising that the condominium would no longer be delivering packages weighing over 10 pounds to individual units. The reason given was concern about the safety of the courier delivery people. Ms. Kong submitted that TSCC1959 should extend the same concern to her in relation to her difficulty in lifting weights over 10 pounds from the ground. Again, this situation does not impose on TSCC1959 an obligation to grant Ms. Kong's request for access to a communal EVCS. Ms. Kong has not demonstrated that the other factors which she cites support her request for an EVCS, whether communal or exclusive, to be installed at the expense of TSCC1959 or the SFC.

D. <u>COSTS</u>

[47] Both TSCC1959 and TSCC1862 have requested the opportunity to make submissions as to costs. Under Rule 45 of the Condominium Authority Tribunal's Rules of Practice, effective January 1, 2020, the Tribunal may order reasonable expenses and costs related to the use of the Tribunal, including costs directly related to a party's behaviour during a hearing that was "unreasonable, for an improper purpose or that caused an unreasonable delay". Rule 46 states that the Tribunal will not order a party to pay another party any fees charged for legal services "unless there are exceptional reasons to do so." The parties may make submissions on costs in this case. They may do so in the CAT-ODR system, where I will post instructions and time frames for these submissions.

E. <u>CONCLUSION</u>

[48] Ms. Kong has been unable to demonstrate that either TSCC1959, TSCC1862 or the SFC has a legal obligation to grant or restore to her access to the communal charging stations in the visitor parking. Nor has she been able to show that TSCC1959 has an obligation to install an EVCS, at its expense, for her exclusive use in her parking area. Her application is dismissed.

F. ORDER

[49] The Tribunal orders that this application is dismissed.

[50] The parties may make submissions as to the costs which ought to be awarded in this case in accordance with the instructions given and time frames set out in the CAT-ODR system.

____

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: October 18, 2021