HUMAN RIGHTS TRIBUNAL OF ALBERTA

Citation: Cush v Condominium Corporation No. 7510322 o/a Renfrew House, 2022 AHRC 87

BETWEEN:

Susan Cush

Complainant

- and -

Condominium Corporation No. 7510322 o/a Renfrew House

Respondent

DECISION

Member of the Commission: C. Nduka Ahanonu

Decision Date: August 16, 2022

File Number: S2018/03/0368

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Overview

[1] The complainant, Susan Cush, filed a Complaint with the Alberta Human Rights Commission (the Commission) on February 2, 2018. The complainant alleges that the respondent, Condominium Corporation No. 7510322 o/a Renfrew House, discriminated against her in the area of goods and services, on the ground of physical disability, (the Complaint), in contravention of section 4 of the *Alberta Human Rights Act* (the *Act*).[1]

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[2] The complainant owns a unit in the condominium complex known as the Renfrew House. The complainant has a physical disability because of an accident that occurred in 1977. She bought this unit in 2004. The complainant had her physical disability when she bought her unit in the complex, however, her physical disability was such that she could not do several things, including using the outside parking lot assigned to her in the complex and going into the complex through the front entrance of the complex. The complainant's physical condition deteriorated after she purchased the unit. Therefore, she required to be accommodated.

[3] The Director dismissed the complaint after the investigation, but the complainant applied for a section 26 review. Following the review, the Chief of the Commission, Michael Gottheil, set aside the Director's decision and directed that the matter should be set down for a hearing, with the complainant assuming carriage of the matter.

[4] The respondent takes the position that there was no discrimination against the complainant and that they had accommodated the complainant's request when the request was made to them.

[5] The hearing of this matter involved 5 days of oral testimony, with 38 exhibits and the submissions of the parties. The Tribunal heard oral testimony from the following individuals:

<u>For the complainant:</u>

1. Susan Cush (the complainant)
2. Dr. Vu (the complainant's doctor)

<u>For the respondent:</u>

1. Mark Kryzan (the current President of the Board)
2. Clive McEwan (Treasurer of the Condominium Corporation)
3. Ashley Parks (who was produced at the direction of the Tribunal)

[6] For the reasons contained in this decision, the Complaint is allowed in part. I find that the complainant met her burden of proof to establish a *prima facie* case of discrimination on the ground of her disability. The respondent proved that they accommodated the complainant's need for an indoor parking stall, but the respondent

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[1] *Alberta Human Rights Act*, RSA 2000, c A-25.5

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failed to prove that they addressed the complainant's request for a ramp or that this discrimination is reasonable and justifiable in the circumstances.

Preliminary Matters

[7] At the beginning of the hearing, counsel for the respondent requested to have in attendance during the hearing the Board members who had been scheduled to testify at the hearing. According to counsel, the presence of the Board members would be required since it was the Board and not one member that should provide him with instructions. The Tribunal made an order for exclusion of witnesses and asked the members of the Board and counsel to determine who, among them, would be present with counsel for the respondent in the course of the hearing. The other members could be present even during the time that the complainant would testify if those members would not be testifying. However, if the Board members present were to testify, they would have to leave, lest their testimonies would be tainted. This direction was provided because a tainted testimony would carry little or no weight. The respondent elected to have the Board President present during the hearing and the other members to be called in when it was their time to testify.

[8] The respondent's counsel also advised the Tribunal at the beginning of the hearing that the respondent would have 3 witnesses. However, after the testimonies of the Board President and Treasurer of the Condominium Corporation, counsel for the respondent informed the Tribunal that the respondent would no longer call Ashley Parks as a witness. The complainant's agent stated that she and the complainant had expected that Parks would be called as a witness and that they had prepared questions that would be put to her. After hearing the submissions of the parties on the issue of having Parks as a witness, the Tribunal exercised its discretion to direct that Parks be produced as a witness, pursuant to section 20.4 (p) of the Alberta Human Rights Commission Bylaws.[2]

Issues

[9] The complaint raises the following issues:

a. Did the respondent discriminate against the complainant by refusing to assign an indoor underground parking stall to her?

b. Did the respondent discriminate against the complainant for not having constructed a ramp at the front entrance of the building, as required by the complainant?

c. If there was discrimination against the complainant, was the discrimination reasonable and justified in the circumstances?

d. What is the appropriate remedy if the complainant is successful in her complaint?

[2] *Alberta Human Rights Commission Bylaws*, March 2022

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[10] The outlined issues are addressed in these reasons.

Summary of the evidence and the position of the complainant

[11] The complainant testified on behalf of herself during the hearing. Here is a summary of her evidence:

(i) The complainant is 69 years of age. She was involved in an accident in 1977. She eventually recovered from the injuries but ended up as an incomplete quadriplegic. The complainant's physical disability created mobility issues for her. To help herself, the complainant walks with a four wheeled walker.

(ii) 18 months after the accident, the complainant got a job as a registered nurse at Misericordia Hospital, Edmonton. She worked there for about 2 years.

(iii) The complainant was having issues with falling and balance. A friend suggested to her to move to Vancouver. The complainant moved to Richmond, Vancouver because the weather out there was more suitable for her because of her disability.

(iv) The complainant's plan was to stay in Vancouver for a couple of years and return home in Calgary.

(v) The complainant has issues with balance, and she falls on occasions. Her physical disability is impacted by spasticity which increases her risk of falling. Cold weather also aggravates her spasticity.

(vi) Knowing that her physical disability might make it more difficult for her to continue in her physically demanding work, the complainant went back to school to complete her bachelor's degree. She did this so she could work in less physically demanding positions.

(vii) At the time she bought her unit in 2004, the complainant had the intention of relocating to Calgary at some point, to be close to her family.

(viii) Though the complainant had her physical disability the time that the complainant bought the condominium unit, she was able to move around more freely. She did not have any need for a ramp at the front entrance of the house, an assigned parking stall in the underground parkade or automated doors at both the man front entrance and at the back garage entrance.

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(ix) At some point, the complainant started having problems with her feet. She ended up having a reconstruction surgery on both feet. The surgery happened in 2006.

(x) At some point it became too much for the complainant and she went on disability and ended up not going back to work.

(xi) She intended to move into the property once she retired. At that time, she planned to retire at the age of 65.

(xii) The complainant had complications with her health which resulted in her having an urgent spinal cord surgery.

(xiii) The complainant's condition worsened to the point that she could no longer access the property through the front door because of the stairs. She also started having issues moving out of the building with her walker, even when she tried to do so through the back entrance.

(xiv) The lane way at the back is uneven and it is a trip hazard for the complainant. There are also gravels on the surface and there is usually snow on the surface in winter. The gravels and snow increase the risk of falls.

(xv) The complainant rented out her unit from the time she purchased her until 2017.

Expert Evidence

[12] The complainant called an expert witness, Dr. Vu, who was qualified to provide opinion evidence in the area of rehabilitation of persons with spinal cord injuries. Prior to the hearing, the expert provided a letter in support of the complainant and also testified at the hearing.

Summary of the evidence and position of the respondent

[13] The evidence of the 3 members of the Board of the respondent and the position of the respondent can be summarized as follows:

(i) The property is a six-storey low-rise apartment complex, with 56 units originally. Following renovations and consolidations, the Corporation currently has 46 individual dwelling spaces.

(ii) The parking stalls in the complex are not titled. Therefore, they are part of the common property. Some units have stalls assigned to them in the underground heated parkade in the same building or underground in a different building.

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There are also surface level parking stalls for some of the units while 2 units do not have any stalls assigned to them.

(iii) At the time the complex was converted into a condominium, individual stalls were assigned to various units with the expectation that those assignments would not change. The owners that got indoor parking stalls assigned to them paid for those stalls and the payment was reflected in the higher purchase price that they paid for the units which were assigned indoor stalls. The parking assignments have remained in place since 1975.

(iv) The respondent could not construct a ramp at the front entrance of the building after the complainant requested it or anytime before the end of 2 years because of lack of funds for the project.

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Applicable Law

[14] The *Act* prohibits discrimination against any person or persons in the area of goods and services. Section 4 provides:

> No person shall
>
> (a) deny to any person or class of persons any goods, services, accommodation, or facilities that are customarily available to the public, or
>
> (b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public
>
> Because of race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of the that person or class of persons or of any other person or class of persons.

[15] Despite provisions of section 4 of the *Act*, section 11 of the *Act* allows a discriminatory conduct of the respondent to stand if such conduct is reasonable and justifiable in the circumstances. Section 11 provides:

> A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

[16] The powers of the tribunal are outlined in section 32 of the *Act*. It provides:

> 32(1) A human rights tribunal
>
> (a) shall, if it finds that

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(i) A complaint is without merit, order that the complaint be dismissed, or

(ii) A part of a complainant is without merit, order that the part be dismissed

and

(b) may, if it finds that a complaint has merit in whole or in part, order the person against whom the finding was made to do any or all of the following:

(i) to cease the contravention complained of;

(ii) to refrain in the future from committing the same or any similar contravention;

(iii) to make available to the person dealt with contrary to this Act the rights, opportunities or privileges that person was denied contrary to this Act;

(iv) to compensate the person dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act;

(v) to take any other action the tribunal considers proper to place the person dealt with contrary to this Act in the position the person would have been in but for the contravention of this Act.

(2) A human rights tribunal may make any order as to costs that it considers appropriate

Analysis

Burden of Proof

[17] The complainant bears the burden of proving that the alleged discrimination occurred. Once the complainant discharges her onus of establishing *prima facie* discrimination, the burden shifts to the respondent to establish that the identified discriminatory acts are "reasonable and justifiable" as envisaged in section 11 of the *Act* and in *Grismer*.[3] In the alternative, the respondent must prove that it has accommodated the complainant to the point of undue hardship.

[3] *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights*), 1999 CanLII 646 (SCC), [1999] 3 SCR 868

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Prima Facie Discrimination

[18] To discharge the onus of her, the complainant shall provide "evidence that, if believed, would establish the claim".[4] The complainant is expected to meet the standard of proof, by establishing the facts in support of her allegation on a balance of probabilities, as required in civil matters.[5] The first component in the analysis is whether a *prima facie* case has been met out by the complainant. This requires the complainant to establish the elements in the Moore test.[6] The elements are:

(a) She has a characteristic protected by the *Act*;

(b) She experienced an adverse impact; and

(c) The protected characteristic was at least a factor in the adverse impact

[19] There is no dispute in this case that the complainant has a physical disability, which is a protected characteristic under the *Act*. The complainant established the nature of her physical disability through her testimony and the testimony of her doctor. The respondent accepts the complainant's disability as a matter of fact.

[20] The complainant sent a letter to the respondent on or about April 27, 2017. In that letter, the complainant requested the following:

(a) A ramp at the main front entrance to avoid having to navigate the four steps up to the front door;

(b) Automated doors at both the main front entrance and at the back garage entrance, and

(c) The assignment of an indoor parking stall as the outdoor stall 36 assigned to the complainant is in an alleyway behind the building that is unsafe for the complainant.

[21] The evidence shows that the complainant was able to move around before and she could use the front entrance to access her unit and she could also use her outdoor parking stall without any issues. However, as her disability deteriorated, she could not access the complex through the front entry door. She could not also use the lane way at

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[4] *Peel Law Association v. Pieters*, 2013 ONCA 396 at para 65

[5] *O'Malley v Simpson-Sears*, 1985 CanLII 18 (SCC), 7 C.H.R.R. D/3102 at D/310; *Bobb v Alberta (Human Rights and Citizenship Commission),* 2004 ABQB 733 at paras 57-70; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center*), 2015 SCC 39 at paras 3-4, 59; See also *Woods v. North American Construction Inc. and The Director of the Alberta Human Rights Commission,* 2022 AHRC 26 at para 6 where the Tribunal Chief, Kathryn Oviatt confirmed this position.

[6] *Moore v British Columbia (Education),* 2012 SCC 61

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the back for walks, notwithstanding that she needs to go walks as part of her treatment. Therefore, I find that the complainant experienced an adverse impact.

[22] I also find that the protected characteristic was a factor in the adverse impact that the complainant experienced and that the protected characteristic continues to be a factor in the adverse impact that the complainant has continued to experience. The respondent argues that the back lane way is safe and that members of the community use the lane way for walks and for other activities. This may be the situation. However, I accept the evidence of the complainant that the lane way is uneven and that it has gravels on it and there is usually snow on it in the winter. The expert had testified that everything is a trip hazard for someone that suffers from spasticity. Therefore, what other people might consider safe as pointed out by the respondent might be far from safe for someone in the complainant's position.

[23] I accept the complainant's evidence that the back lane way is not safe for her to use to enter or exit the building, as there is a "significant slope" in the lane way. I also accept that it is difficult for the complainant to use the back lane way in the winter, especially when the snow has not been shoveled.

[24] The evidence shows that the complainant's disability was a factor in the adverse impact that the complainant had suffered.

Defence of Reasonable and Justifiable Conduct

[25] The requirement of "reasonable and justifiable" conduct is a statutory defence which will make an otherwise discriminatory act acceptable.[7] Therefore, it is the responsibility of the respondent to show that what should have ordinarily been classified as discriminatory is "reasonable and justifiable in the circumstances" at hand.

[26] In the case of *British Columbia (Public Service Employee Relations Commission) v. BCGSEU (Meiorin)*, the Supreme Court of Canada set out the legal test that the respondent should meet to prove a "reasonable and justifiable conduct":[8]

(1) That the employer adopted the standard for a purpose rationally connected to the performance of the job.

(2) That the employer adopted the particular standard in an honest and good faith believe that tie was necessary to the fulfillment of that legitimate work-related purpose; and

(3) That the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees

[7] *The Act,* s 11

[8] British Columbia (Public Service Employee Relations Commission) v. BCGSEU, 1999 CanLII 652 (SCC) at para 71

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sharing the characteristic of the claimant without imposing undue hardship upon the employer.

[27] Though the *Meiorin* test was formulated in the context of discrimination in an employment context, the Supreme Court modified the test so it applies to services. In *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*[9] , (known as the *Grismer* case), the Supreme Court held that:

> Once the plaintiff establishes that the standard is prima facie discriminatory, the onus shifts to the defendant to provide, on a balance of probabilities, that the discriminatory standard is a BFOR or has a bona fide and reasonable justification. In order to prove the justification, the defendant mut prove that
>
> 1. It adopted the standard for a purpose or goal that is rationally connected to the function being performed;
>
> 2. it adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
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> 3. the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.

[28] In *Council of Canadians with Disabilities v. Via Rail Canada Inc.,*[10] the Supreme Court held that the *Meiorin* test is also applicable in the cases involving physical barriers. In that case, the Court held:[11]

> The same analysis applies in the case of physical barriers. A physical barrier denying access to goods, services, facilities or accommodation customarily available to the public can only be justified if it is "impossible to accommodate' the individual "without imposing undue hardship" on the person responsible for the barrier. There is, in other words, a duty to accommodate persons with disabilities unless there is a bona fide justification for not being able to do so.
>
> The concept of reasonable accommodation recognizes the right of persons with disabilities to the same access as those without disabilities and imposes a duty on other to do whatever is reasonably possible to accommodate this right. The discriminatory barrier must be removed unless there is a bona fide justification for its retention, which is proven by establishing that accommodation imposes undue hardship on the service

[9] *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights),*1999 CanLII 646 (SCC) at para 20
[10] *Council of Canadians with Disabilities v. Via Rail Canada Inc.*, 2007 SCC 15
[11] *Council of Canadians with Disabilities* at para 120 and 121

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provider: Commission scolaire regionale de Chambly v. Bergevin, 1994 CanLII 102 (SCC), [1994] 2 S. C. R (“Chambly”), at p. 546.

[29] The parties agree that the requests that are still in issue before the Tribunal are in relation to the assignment or re-assignment of an indoor parking stall and the construction of a ramp at the front entrance of the building. The parties agree that all other requests contained in the complainant’s letter of April 17, 2017 have been addressed. As the alleged discrimination happened in the context of services, the *Grismer* test is applied to each of the requests in determining whether the respondent’s conduct is justified regarding each of the request or if the respondent had provided reasonable accommodation to the complainant.

Assignment of an indoor parking stall

[30] The complainant argues that the respondent could assign her a designated indoor parking stall for a number of reasons, which include the following:

- that she had made her intention known to the president of the board at the time that she bought her unit that she would be needing a stall and she was informed that there was a mechanism to reassign the stalls.
- that some stalls are vacant;
- that some members/unit owners were selling stalls or renting out stalls and that the management knew about that.

[31] The evidence adduced on behalf of the respondent is not significantly different from the position of the complainant in this regard. The evidence of the respondent is that condominium has between 46 to 54 units in the building, with some owners having double units. There are 38 underground parking stalls on level one and 11 outside parking stalls in the alleyway off level one on the northeast side of the building. Some unit owners have exclusive use of parking spots in the underground garage at the neighbouring condominium Cumberland House under a 99-lease agreement. One unit does not have an assigned exclusive use parking stall. Some owners have exclusive use to more than one assigned parking stall. Some owners made rental or loaner agreement with other owners. There are some indoor parking stalls that appear not to be used or that are not being used by tenants or owners. Some owners have two indoor parking stalls assigned to them.

[32] As per the first step of *Grismer,* I must find that:

1. *The respondent adopted the standard for a purpose or goal that is rationally connected to the function being performed.*

[33] The condominium had a rule (standard) that the condominium units were to maintain that parking stalls that were assigned to them and that indoor parking stalls were to attract higher prices than the parking stalls outside. With this arrangement in place, owners of the parking stalls could rent out their stalls to other unit owners and could also

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swap the use of the parking stalls on their own, without the involvement of the condominium board. The purpose of this rule was to ensure fairness in the use of the common property by allowing the people that paid higher prices for the indoor parking stalls to use the stalls that they paid for and also allow the units that had indoor parking stalls assigned to them to maintain the value that was envisaged they would have at the time that the assignment of parking stalls was carried. I find that the respondent adopted this rule (standard) for a purpose that is rationally connected to the function being performed by the condominium board, which a fair administration of the common property at the complex.

2. *The respondent adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal.*

[34] The complainant did not argue, and I see nothing in the evidence that suggests this rule was not adopted in bad faith. I therefore find that it was a good faith rule adopted for the fulfillment of a valid purpose.

3. *The standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.*

[35] For the respondent to meet this requirement, it had to show that it could not meet its goal of ensuring fairness and certainty amongst the unit owners while assigning an indoor parking stall to the complainant at the same time, without incurring undue hardship.[12] The undue hardship may take the “form of impossibility, serious risk or excessive cost”.[13]

[36] The respondent argued that the standard was necessary because the condo board could not possibly re-assign an indoor parking stall to the complainant without violating the bylaws. The respondent further argued that the parking stalls had been assigned at the time that the building was converted to a condominium and that the respondent would need to comply with Article 58 of the Condominium Bylaws if it were re-assigning the parking stalls. The current assignment of parking stalls in the complex is fixed and cannot be changed without a special resolution of the owners in accordance with Article 58(b) of the Condominium Bylaws. The said Article 58(b) was in place at the time the complainant purchased her unit.

[37] The respondent further argued that pursuant to Article 58 of the Condominium Bylaws, the Condominium Board prepared the draft resolution, with input from the complainant and circulated the draft resolution among the members. However, the draft resolution did not pass. Since the special resolution was unsuccessful, the best the respondent could do was to ensure that they accommodated the complaint by providing her with an indoor parking stall whenever she made her request for the same.

[12] *Grismer* at para 30
[13] See *Grismer* at para 32

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[38] Regarding the special resolution that did not pass, the complainant argued that the respondent could have done more to ensure that the resolution was successful. It is unclear from the evidence and the submissions of the complainant as to what further steps could have been taken by the respondent to make the special resolution successful. The complainant was involved in the drafting of the resolution, and she understood the rationale behind the resolution. Nobody had a greater stake in the resolution than the complainant. The Chair of the condo board testified that all they could do was to put the draft resolution before the condominium unit owners to vote on the resolution. They did that. Therefore, the complainant should have been the person to do more to ensure that the resolution was successful, assuming the complainant believed that the resolution could have been successful if more efforts were put into it.

[39] In *Grismer,* the Supreme Court defined "accommodation" as "what is required in the circumstances to avoid discrimination."[14] The complainant argues the non-assignment of an indoor parking stall is a failure on the part of the condominium board to accommodate her, bearing in mind her physical inability. However, the evidence is that the respondent had been able to provide the complainant with an indoor parking stall each time the complainant had requested to use an indoor parking indoor stall. According to the respondent, all that the complainant needed to do was to make her request and that each time the board got the request, the board had acted on the request and provided the complainant with an indoor parking stall for the duration of her stay in the property, without issues. The complainant agreed that this was the case. The complainant also agreed that she usually got the stall that was suitable for her needs, as there are stalls that might be difficult for her to navigate. Despite the pattern of requests for an indoor parking stall and the accommodation of the same, the complainant still insisted on having an assigned indoor parking stall so she would have the assurance that she would always get an indoor parking stall.

[40] To the complainant, it would be ideal to get an assigned indoor stall as she requested. However, there is no obligation on the respondent to provide the complainant with a perfect accommodation. In *Callan v. Suncor,* [15] the Alberta Court of Appeal held that:

> There is no duty of instant or perfect accommodation, only reasonable accommodation. The reasonableness of the employer's accommodation must be evaluated considering the knowledge of the employer, together with the cost, complexity and expense of any physical accommodation required, and other factors. The test is not subjective, and the employee is not entitled to dictate the accommodation he or she will accept. Nor is the employer required to accept the complainant's own subjective assessment of his or her abilities.

[41] The Supreme Court of Canada has also held in *Central Okanagan School District No. 23 v. Renaud (Renaud)* that the search for accommodation is a "multi-party inquiry",

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[14] Grismer, at para 22
[15] *Callan v. Suncor*, 2006 ABCA 15 at para 21

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as there is a corresponding duty on the complainant "to assist in securing an appropriate accommodation".[16] The search for accommodation is a process which requires the complainant to cooperate with the respondent in finding a way to accommodate the complainant. Regarding the cooperation that is needed, the Supreme Court went on to say in *Renaud* that "

> While the complainant may be in a position to make suggestions, the employer is in the best position to determine how the complainant can be accommodated without undue interference in the operation of the employer's business.

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[42] The decision in *Renaud* was made in an employment context. However, the same principle is applicable in situations where there is a duty to accommodate. In this case, the pattern that has been established in the interaction between the complainant and the respondent is such that the respondent has been able to provide the reasonable accommodation that is required to address the needs of the complainant. The respondent further submitted that they would continue to accommodate the complainant once she makes her request just like they had done in the past.

[43] The availability of assigned but unused stalls as well as the willingness of other owners to swap or rent stalls to others offer the respondent the ability to accommodate the complainant each time the complainant makes her request for an indoor parking stall. The complainant may also enter a private arrangement with stall owners for an indoor stall that she can use, all because of the understanding and flexibility that exist among the owners in the complex.

[44] In light of the evidence given by both sides in this case, I find that the complainant's desire for the assurance of knowing that there is a parking stall for her to be used at anytime and any how she wishes is akin to perfection. However, as perfection is not the goal, the question is whether the respondent has provided reasonable accommodation in the circumstances. In my view, the respondent has discharged the duty to accommodate the complainant in this situation. They had accommodated the complainant all the times in the past that she had required accommodation. I accept the respondent's submissions that the Board will continue to accommodate the complainant

[45] The complainant argued that having an indoor parking stall would mean that the respondent shall not breach the Act in the future. This argument is speculatory and the antecedents of the respondent, as shown in the evidence on this issue show otherwise. It is not for the tribunal to stop any breach of the human rights act which the complainant is speculating about, especially where there are no grounds for the speculation. The jurisdiction of the tribunal is to deal with any discrimination that might have occurred and to stop an ongoing discriminatory conduct.

[46] The complainant relied on the case of *Ganser v. Rosewood Estates Condominium Corporation (Ganser)*[17] to support her argument for an assigned parking stall, but the

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[16] *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 1970

[17] *Ganser v. Rosewood Estates Condominium Corporation*, 2002 AHRC 2 (CANLII)

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respondent argued that the *Ganser* decision is not applicable in this case. I agree with the respondent that *Ganser* is distinguishable from this case, as the circumstances in *Ganser w*ere different. *Ganser* involved a situation where the condominium corporation sought to revoke the indoor parking stall of Ms. Ganser, an 87-year-old woman, who had a disability. Ms. *Ganser* was not using her parking stall because she could not drive, but the parking stall was being used by Ms. Ganser's family members and friends who were helping Ms. Ganser from time to time because of her disability. The condominium corporation decided to amend the existing bylaws to prohibit the assignment of parking stalls to anyone who did not have a driver's license. The Tribunal in that case found the conduct of the condominium corporation to be discriminatory. However, in this case, the complainant's unit did not have any indoor parking stall assigned to it at the time of the conversion of the building to a condominium and there was no indoor parking stall assigned to the complainant after she purchased her unit.

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[47] The complainant argued that, at the time she purchased her unit, she relied on the representations made to her by the president of condominium board at that time that she could get an indoor parking stall whenever she needed it because stalls could be re-assigned. There is no reliable evidence that the then president of the Board made the representations to the complainant and that the complainant relied on the representations. The only evidence before the Tribunal in this regard is the oral testimony of the complainant stating that the representations were made to her. The discussions, as presented by the complainant, are not enough to support the request that an indoor parking stall be assigned to the complainant.

[48] I find that the practice of working with the complainant to provide the complainant with a parking stall whenever she needs an indoor parking stall is "reasonably necessary" to accomplish the goal of ensuring fairness and certainty among the unit owners. Therefore, in my view, the respondent has satisfied the three elements of the *Grismer* test. To summarize, I find that:

(a) The standard adopted by the respondent is to use do what it can to provide an indoor parking stall to the complainant whenever the complainant requests. The goal is to ensure that the complainant is not deprived of a service that is generally accessible to the members of the public.

(b) The respondent adopted the standard in good faith, with the belief that the standard is necessary for the fulfillment of the purpose. The good faith on both sides has been working well.

(c) The standard adopted by the respondent, that is, the good faith efforts in addressing the parking needs of the complainant, is reasonably necessary to accomplish the respondent's purpose of accommodating the complainant. Considering the history behind the allocation of the indoor parking stalls in the complex, the respondent may incur undue hardship if it is required to do what the complainant is requesting in this situation.

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[49] As the respondent has provided reasonable accommodation to the accommodated the complainant in a manner envisaged by the Act, I dismiss that part of the complaint.

[50] It bears mentioning that the respondent argues that the Tribunal does not have the jurisdiction to deal with the assignment or re-assignment of parking stalls in this case for a number of reasons, I disagree with the respondent on this point. I am of the view that the Tribunal has the jurisdiction to direct that an indoor parking stall be assigned to the complaint if the respondent had been found to contravene the Act. However, as I have dismissed the part of the complaint dealing with the re-assignment of indoor parking stalls on the basis that the respondent has met the *Grismer* test, I do not think it is necessary to deal with the reasons put forward by the respondent for the argument that the Tribunal has no jurisdiction in regard to the issue of assigning an indoor parking stall to the complaint.

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Construction of a Ramp at the Front Entrance of the Building

[51] The second outstanding issue in the complaint is the request for the construction of a ramp at the front entrance of the building. The position of the respondent on this issue is not clear. On one hand, the respondent argued that there was no discrimination by the respondent. If this position is correct, then the respondent does not owe the complainant any duty to accommodate her. On another hand, the respondent argued that it had been working with the complainant to find affordable ways of building the ramp. The respondent's evidence suggests that the respondent did this by engaging the complainant in the process of assessing what type of ramp that should be built and what the design might be. However, the respondent argued that because of other priority projects that the construction of the ramp could only be completed by December 2025. With this argument, the respondent seems to be suggesting that their conduct is 'reasonable and justifiable' in the circumstances.

[52] I neither accept the argument that the respondent has not discriminated against the complainant on this issue nor that the respondent has satisfied its duty to accommodate the complainant to the point of undue hardship. In reaching this conclusion, I considered the evidence and arguments of the parties in light of the *Grismer* test.

Application of the *Grismer* test to the issue

[53] I must consider the issue of construction of a ramp at the front entrance of the building, using the 3-prong test outlined in *Grismer:*

1. *The respondent adopted the standard for a purpose or goal that is rationally connected to the function being performed.*

[54] The evidence of the condo board members who testified on behalf of the respondent was that it was the practice of the board to address the capital expenditures that have been outlined in the reserve fund study which was conducted on behalf of the respondent. Therefore, for any other project that needs to be done in the complex, the condominium must wait until the funds become available for the project or there could be a special levy for such projects. I find that that the goal for this practice is to ensure

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financial accountability which is rationally connected to the function of the board – the administration of the affairs of the condominium on behalf of the members. Therefore, I agree with the respondent on this point. However, the challenge is with the other two arms of the *Grismer* test.

2. *The respondent adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal;*

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[55] There is a lack of clarity on the position of the respondent regarding the construction of the ramp and this raises questions about the good faith on the part of the respondent. The parties agreed that constructing a ramp at the front entrance of the building would be reasonable accommodation for the complainant. While the respondent did not outrightly say that it was not going to construct a ramp in the front entrance, they outlined reasons the ramp had not been constructed prior to the hearing and could not be constructed at the time of the hearing or anytime before 2 years after the hearing However, the respondent was not definitive that the ramp would be constructed after the 2-year period. The evidence shows that the Board made efforts to obtain quotes for the construction of a ramp. However, the condominium board would not proceed with the quote it got because it "did not agree with a wooden ramp construction as a viable, long-term solution". The Board also "had concerns regarding compliance with the Alberta Building Code, 2014 and therefore chose to see further quotes" before making a decision. The quote from Advance Building Systems Ltd was obtained in April 2017.

[56] The Board made further efforts in May and June of 2017 to obtain additional quotes by contacting another company, Motion Specialties, about assessing the accessibility of the front entry-way and providing a quote for the construction of a ramp. The company, Motion Specialities, did not attend a scheduled site visit, so the Board decided to contact other qualified contractors who might be better able to assist in a more timely fashion.

[57] Over the summer of 2017, the Board continued to obtain and evaluate quotes for the installation of power-assisted doors and a front entry-way ramp, as requested by the complainant. The Board obtained a quote from AMRAMP for the installation of a modular metal ramp at a cost of $11,446, exclusive of any necessary landscaping work or renovations to the front steps.

[58] The respondent argued that it had kept the complainant apprised of its efforts in finding a company that could construct the ramp at an affordable price. On or about August 17, 2017, the condominium board, in its correspondence with the complainant, advised the complainant of the efforts it had taken to address the complainant's needs for accommodation.

[59] After reviewing the different quotes and proposals for the installation of power-assisted doors and a modular front entry-way ramp, the Board came to the conclusion that it was not clear that the Corporation could easily construct a safe ramp system that would meet the needs of physically disabled residents within its budget. The Board members further testified that the Board would need to evaluate the "scope of work required and the adequacy of any proposal to safely address the needs of the residents,

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and the cost of those proposals. The Board decided to defer its decision until a later date in an effort to try to continue to gather the necessary information". This decision was made in September 2017. The Board also concluded, after reviewing the quotes received and the configuration of the entrance of the building, that it was not clear that the respondent would be able to construct the ramp which the complainant was asking for in a manner that would comply with the building code.

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[60] The evidence shows that the respondent was in communication with the complainant regarding the issues the complainant raised in her letter of April 2017, including the request for a ramp at the front entrance. This may suggest that the respondent had adopted the practice of seeking and assessing different quotes in good faith, believing that the practice was necessary in carrying out the function of the board in a fair manner.

[61] The respondent further argued that the complainant was not wheelchair bound, but that there was another owner who is wheelchair bound in the property. According to the respondent, the construction of any ramp or a re-configuration of the front entrance of the building should be done in such a way that the mobility needs of that owner who is wheelchair bound as well as potential future owners in the complex should be addressed. The complainant currently moves about with a wheeler. Therefore, any construction of a ramp in this situation should be done with this in mind.

[62] It is good that the respondent had considered the needs of other people with disability in assessing the quotes for the construction of the ramp. However, the issue before the Tribunal is whether the respondent has discriminated against the complainant and whether the respondent has accommodated the respondent to a point of undue hardship. I acknowledge that the complex was built at a time before the *Act* came into force and that the complex also predates the *Alberta Building Code*, which ordinarily could require handicap accessibility. It might sound logical that the respondent had thought about taking steps to bring the building in line with the requirements of *Alberta Building Code,* but the complaint is about the discriminatory situation that currently exists against the complainant and not about making the building accessible for anyone who is wheelchair bound.

[63] The complainant sent her letter to request accommodation in April 2017 and her complaint was filed in 2018. The discussions between the complainant and the respondent have been ongoing since then. The hearing occurred in February of 2022. It has been over 5 years since the complainant brought her request for accommodation to the attention of the respondent. While the respondent did deal with other aspects of the request by the complainant, the respondent did not outrightly refuse to construct the ramp at the front entrance or accept to do it. There is no doubt that there have been requests for quotes by the respondent, assessment of how to construct the ramp that will comply with the code and how to source the funds for the project. However, it has been a long time since the request was made, with the respondent being aware of the disability of the complainant. Yet, the respondent has only outlined a plan for the construction of the ramp which might only be finished in 3 years. Even with the plan outlined by the respondent, there is also no real commitment on the part of the respondent that it would complete the

construction within the period the period that it had suggested. This is concerning to the Tribunal.

[64] The respondent also argued that that it had not discriminated against the complainant in any way. The respondent advanced the following in support of their position in this regard:

- the complainant bought her unit in 2004, at a time she knew about her disability,
- the complainant knew that her disability would get worse with time,
- nothing had changed since the complainant bought her unit, as the building did not have a ramp then and does not have a ramp now.

[65] I do not accept the argument of the respondent in this regard. The *Act* does not distinguish between an intentional and unintentional discrimination. It is either that an act is discriminatory or that the act is not discriminatory. If an act or a conduct of the respondent is discriminatory, there should be a remedy. If the act or conduct is found not be discriminatory, the complaint will be dismissed. The question of whether a respondent had intentionally discriminated against a complainant may be relevant in determining the appropriate remedy, but intention is not a requirement in determining whether discrimination has occurred.

[66] In my view, the question of whether the respondent had engaged in any discriminatory conduct against the complainant arose after the complainant sent her letter in April 2017 where she was seeking accommodation because of her physical disability. Prior to that time, there was no issue of discrimination and no concomitant duty to accommodate the complainant. The request by the complainant changed the complexion of things between the complainant and the respondent.

[67] The lack of commitment on the part of the respondent regarding when it intended to construct the ramp and the different arguments that the respondent advanced to support its position in this regard lead me to conclude that the respondent did not adopt the practice (the standard) in question in good faith, as required under the *Grismer* test.

3. The standard is reasonably necessary to accomplish its purpose or goal, in the sense that the respondent cannot accommodate persons with the characteristics of the complainant without incurring undue hardship.

[68] The respondent's position is that the complainant had her accident in 1977 and purchased her unit in the complex in 2004 and that the complainant knew that her health would deteriorate. Yet, the complainant went ahead to purchase the unit. Therefore, the complainant should not have raised any complaint about the lane way from the garage and the condition of the front entrance of the complex.

[69] The complainant's expert witness, Dr. Vu, established the nature of the complainant's disability and how the respondent's disability has continued to impact her day-to-day living. Dr. Vu testified on how the complainant's spasticity could put the

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complainant at risk of tripping and falling. The doctor further testified that the complainant needs to go on regular walks, up to 3 times a week, to stretch her muscles and help her in building her strength. The expert explained the challenges that someone who suffers from spasticity could face on a day-to-day basis, including the challenge of climbing stairs.

[70] On cross examination, the expert agreed that she had not visited the complex to see the condition of the complex. Dr Vu also confirmed that she did not have the benefit of an independent assessment to determine the nature of the challenges that the complainant might face in the building. Instead, the expert relied on the information provided to her by the complainant. I do not have any issues with the approach of the expert in this regard. It is not unusual for an expert to rely on information from someone else. This does not affect the credibility of the expert witness nor the reliability of the opinion of the expert. In *R v. Abbey*[18] the Supreme Court held:

> An expert witness, like other witness, may testify as to the veracity of facts of which he has first-hand experience, but this is not the main purpose of his or her testimony**. An expert is there to give an opinion. And this opinion more often than not will be based on second-hand evidence**. This is especially true of the opinions of psychiatrists: [emphasis added]

[71] In this case, Dr. Vu is not a psychiatrist, but the same principle applies to her evidence. The information provided to the expert about the condition of the complex is consistent with the testimony provided by the complainant at the hearing. In my assessment, there are no material contradictions in the complainant's testimony. Therefore, I have no reasons to question the complainant's credibility.

[72] I find the opinion of Dr. Vu helpful in understanding the challenges that someone in the complainant's situation might face. The respondent did not call any expert witness to challenge the conclusions reached by Dr. Vu in her assessment of how the conditions of the complex might affect the complainant on a day-to-day basis. There was no evidence to contradict the opinion of the expert or to show that the information that the expert relied on was inaccurate. The respondent's witnesses agree that the there are stairs at the front entrance of the building. The only disagreement is in relation to the condition of the back lane which the respondent argues is safe and that the complainant should use it.

[73] I accept the evidence of the complainant about the conditions of the lane way and the challenges the conditions of the back lane way pose to her. The evidence of the respondent is that the lane way is safe and that the members of the community use it for walks. I do not disagree with the respondent on this point. However, following the evidence of the expert in this case, I am of the view that the gravels and potholes on the lane way will make it unsafe for someone with the type of disability that the complainant has. The back lane way will be more unsafe during the winter because of ice and snow.

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[18] *R. v. Abbey*, 1983 CanLII 25 SCC at para 42

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Therefore, I do not agree that the back lane way is a reasonable alternative route for the complainant, bearing in mind her need for walks, as part of her exercise.

[74] The respondent's evidence is that the Board obtained a reserve fund study from Clear Path Engineering on October 21, 2015, and that that the reserve fund study showed that the corporation would be facing significant fund expenses over the next few yeas to fulfill its maintenance obligations and extend the economic life of the Corporation. The reserve fund study projected that for the years 2017 to 2021, the Board would incur approximately $200,000 per year in reserve fund expenditures that would be required to comply with the Corporation's maintenance and repair obligations. The Board provided further details on this point to show that the estimates were on the low side, as the actual expenses incurred during the period and the expenses that were anticipated were much higher. It was further stated in the testimony of the Board members that the installation of a front entry-way ramp was not provided in the Study, therefore, it was not part of the Corporation's reserve fund plan. If the ramp was to be constructed, the respondent would have to find other means of funding the project.

[75] Since the complainant submitted her request for the construction of the ramp, the respondent has been dealing with other projects in the complex. These projects include: the replacement of the elevator, the renovation of the front balcony as well as the replacement of the cladding. The Condominium Board regards these projects as its priorities because of the responsibilities that the *Condominium Property Act* imposes on the corporation. The challenge for the respondent is that the need for compliance with the *Act* is so fundamental that nobody may delay or avoid the compliance just because of the requirements of other legislation, such as the *Condominium Property Act.* The effect of the *Alberta Human Rights Act* on other provincial laws is that "every law of Alberta is inoperative to the extent that it authorizes or requires the doing of anything prohibited by" the Alberta Human Rights Act.[19] The respondent cannot rely on the provisions of the *Condominium Property Act* to avoid the responsibility that the *Act* imposes on it when there is a contravention of the *Act*, except if the respondent can prove that the "alleged contravention was reasonable and justifiable in the circumstances".[20]

[76] While the respondent seems to be working with the complainant to find ways to accommodate her as shown in the arrangements the respondent had made in providing an indoor parking stall to the complainant whenever she made a request, it does not seem that the respondent had approached the request for a ramp with the same commitment as they had shown in dealing with the request for an indoor parking stall. In the case of the indoor parking stall, the respondent was clear that they could not provide the complainant with an assigned indoor stall because of the challenges in getting that done, but that they would do their best to accommodate her whenever a request for the same is made. I appreciate that the situation with the parking stall is different from the request for a ramp. The construction of a ramp will entail a significant amount of resources and the respondent believed that other projects that also required significant amount of resources would trump the construction of the ramp. The priority projects that the Board

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[19] *The Act*, s.1(1)

[20] See the *Act*, s11; Grismer

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wanted to complete included the following: the replacement of the balcony, the replacement of the elevator, the cladding project.

Reasonable Accommodation

[77] The respondent also argued that it had accommodated the complainant to the point of undue hardship. The phrase "undue hardship" has not been specially defined in the case law, but the Supreme Court has explained the concept in different contexts. In *Meiorin*[21] the Court explained the concept to mean a situation "where an employer or a service provider shows that it could not have done anything else reasonable or practical to avoid the negative impact on the individual". In *Council of Canadians with Disabilities v. VIA Rail Canada Inc.,*[22]the Supreme Court of Canada held that

> The point of undue hardship is reached when reasonable means of accommodation are exhausted and only unreasonable or impracticable options for accommodation remain.

[78] In this case, there is no credible evidence to support the assertion that the respondent had accommodated the complainant to the point of undue hardship. The only evidence of hardship adduced by the respondent was in relation to a lien that was put on the property of one of the unit owners who had not paid the special assessment that was levied for the cladding project. The respondent did not provide further particulars about the circumstances of the lien and no information that the unit owner had been consistent in paying their condominium fees in the past and that they fell behind in their payment because of the amount and timing of the special levy. It should also be pointed out that the lien mentioned was in respect of one owner out of over 40 owners. In my view, this does not meet the test of "undue hardship" which the respondent is required to prove in the context of their duty to accommodate the complainant. To be successful with their argument of undue hardship, the respondent needs to meet the threshold of "impossibility, serious risk or excessive cost" as outlined in *Grisme*r.[23] Therefore, I do not accept the respondent's argument that they have accommodated respondent to the point of undue hardship regarding the construction of a ramp at the front entrance of the building

[79] The respondent adduced evidence of the items that were pointed out in the reserve fund study to support their position that the respondent could not carry out the construction of the ramp soon after it became aware of the complainant's need, at the time of the hearing or any period in two years time. The Board has prioritized those items in the reserve funds study, but the request for the construction of the ramp has remained outstanding. In *Council of Canadians with Disabilities*,[24] the Supreme Court held:

> The scope of the right of persons with disabilities to be free from discrimination will depend on the nature, legitimacy and strength of the

[21] *Meiorin* at para 38
[22] *Council of Canadians with Disabilities* at para 130
[23] *Grismer* at para 32
[24] Council of Canadians with Disabilities at para 127

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competing interests at stake in a given case. These competing interests will inform an assessment of what constitutes reasonable accommodation.

[80] The Tribunal cannot tell the respondent how to run its affairs. However, where a complainant establishes a *prima facie* case of discrimination and the respondent is not able to establish that the alleged discriminatory conduct can be justified, bearing in mind all the circumstances of the case, the tribunal shall intervene. I accept that the work completed by the Condominium Board since becoming aware of the need to accommodate the complainant as well as the work that the respondent is currently completing are legitimate competing interests *vis-à-vis* the work that is needed to reasonably accommodate the complainant. However, looking at the whole evidence, the submissions of the parties in this case and the circumstances of this case, I am not persuaded that the steps taken by the respondent are reasonable and justified in the circumstances. Therefore, I hold that the respondent has not satisfied the third prong of the *Grismer* test.

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Remedy

[81] Section 32 of the *Act* provides that the Tribunal shall dismiss a complaint if it is found that it is without merit. If a part of the complaint is without merit, the tribunal shall dismiss that part. If the tribunal finds that a complaint has merit in whole or in part" the tribunal may order the respondent to cease the contravention complained of, refrain future form committing the same or any similar contravention, make available to the complainant the rights, opportunities or privileges that she was denied in contravention to the *Act.* The tribunal may also take any other action the tribunal considers proper to place the person dealt with contrary to this *Act* in the position the person would have been but for the contravention of this *Act.*

[82] The respondent is of the position that there was no discrimination against the complainant. If the tribunal accepts the position of the respondent, there shall be no award of damages in any form. As indicated earlier, I find that the complainant had established a *prima facie* case in relation to the issue of two issues - the indoor parking stall and the construction of a ramp at the front entrance. However, I dismissed the complaint in relation to an indoor parking stall because the respondent proved that it had provided reasonable accommodation to the complainant, as required under *Grismer.* The respondent has not been successful in proving that the alleged contravention was reasonable and justifiable as required under section 11 of the *Act* and Grismer. Therefore, I have to determine the appropriate remedy.

Assessment of remedy

[83] In *Walsh v. Mobil Oil Canada (Walsh),* the Alberta Court held:[25]

> [31 Human rights legislation must be accorded a broad and purposive interpretation having regard to its fundamental purpose: to recognize and affirm that all persons are equal in dignity and rights and to protect against

[25] *Walsh v. Mobil Oil Canada*, 2013 ABCA 238 at paras 31 and 32

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and compensate for discrimination. In addition to compensating victims of discrimination, the remedial authority under human rights legislation serves another important societal goal: to prevent future discrimination by acting as both a deterrent and an educational tool: Canada (Treasury Board) v Robichaud, 1987 CanLII 73 (SCC), [1987] 2 SCR 84.

> [32] Damage awards that do not provide for appropriate compensation can minimize the serious nature of the discrimination, undermine the mandate and principles that are the foundation of human rights legislation, and further marginalize a complainant. Inadequate awards can have the unintended but very real effect of perpetuating aspects of discriminatory conduct

[84] The decision in *Walsh* was made regarding the assessment of damages for lost income in the context of discriminatory employment practices. However, the principle is applicable in the assessment of general damages as well. On the award of general damages, the Court of Appeal in Walsh further held that[26]

> [59] In Alberta there is no statutory limit on the amount of damages available for mental distress, injury and loss of dignity flowing from discriminatory conduct. Broadly speaking, the measure of damages for mental distress requires consideration of the effect the discrimination had upon the complainant and whether the discrimination was engaged in willfully or recklessly.

> [60] The Ontario Human Rights Commission recently outlined the criteria for awards of general damages: see Arunachalam v Best Buy Canada Ltd, 2010 HRTO 1880 (Ont Human Rights Trib). The first aspect is to characterize the injury based on the nature of the discriminatory conduct, depending for example, on how serious or prolonged the conduct was. The second is to recognize the complainant's particular experience in response to the discrimination. To the extent that a complainant has experienced particular emotional difficulties as a result, this will likely increase the amount of the award.

[85] It is clear in the decision of *Walsh,* that the Court of Appeal expects that when assessing general damages payable to the complainant that the tribunal shall consider the following - the nature of the discriminatory conduct by the respondent, the duration of the conduct, the damaging impact of the conduct on the complainant and the position adopted by the respondent in the proceeding:[27] It must be added the categories of factors to be determined in assessing general damages are not closed. It all depends on the circumstances of each case. In this case, I have considered the following factors in determining the appropriate damages to be awarded in this case

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[26] *Walsh*, at paras 59 and 60
[27] See *Walsh*, at para 64

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Nature of the discriminatory conduct

[86] The evidence is that the complex in question is a building which predates the *Act.* The complainant did not have any issues with the accessing the property at the time she bought it until her physical disability deteriorated to the point that she could no longer access the property through the front entrance. The discriminatory situation did not arise because of what respondent did or did not do. However, intention is not a factor that is considered in discrimination. Therefore, it does not matter if the respondent intended to discriminate against the complainant or not. All that matters is that discrimination has occurred. The respondent had argued that the complainant knew about her disability and that the complainant went ahead to buy the condo unit in the complex when she did. I find that the discriminatory conduct was serious because it happened in relation to the residence of the complainant. This is a place where the complainant ought to be feel most safe like anyone else, but that is not happening for the complainant because of her disability. The complainant needs to go for walks on a regular basis, as advised by her doctor, but she has not been able to do so in her residence because of the discriminatory situation at the complex.

Duration of the Discriminatory Conduct

[87] The complainant made her request for accommodation in April, 2017. She was engaged in some discussions with the respondent on how to deal with the issues. However, the complainant filed her human rights complaint in 2018. From the time that the respondent became aware of the complainant needs to the time of the hearing, a period of almost 5 years passed from the time the respondent became aware of the complainant's needs until the hearing. Yet, the ramp has not been built. The Respondent has been dealing with other projects which it prioritizes over the construction of the ramp while the complainant continues to suffer the impact of the situation. In my view, a 5-year period is a significant amount of time to construct the ramp which the complainant is requesting and which the respondent agrees will be useful in addressing the issue of accessibility by other people with mobility issues. The complainant should not have been made to wait for that long. In its preamble, the *Act* states 'it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in: dignity, rights and responsibilities without regard to" any of the attributes outlined in the *Act.* Physical disability is one of those attributes.

[88] As already stated, the respondent became aware of the discriminatory situation when it received the letter from the complainant in April 2017 and the complaint was filed in 2018. However, I have included the post-complaint period in my determination of the duration of the discriminatory conduct. For this, I relied on the Court of Appeal decision in *Walsh* where the court recognized that the categories of factors in assessment of damages should not be closed. Therefore, it is important in a case like to considered what had happened after the complaint was filed.

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Damaging Impact of the discrimination

[89] I accept the complainant's evidence that she will not be able to move into complex permanently if the ramp is not constructed. I also accept the complainant's evidence that she is the type that wishes to do things for herself, including things such as taking things from her vehicle and bringing those things into her unit. She is not able to do those things because of the situation at her residence. The complainant also testified of the time when she had tripped and fell because of the conditions of the back lane way. Such incidents will dent the dignity of any person and the complainant should not be an exception. The expert testified on the importance of engaging in physical activities, including walking, which the complainant may not be able to do because of the conditions of the lane way at the back and the absence of a ramp at the front entrance of the building.

Position of the respondent during the proceeding

[90] The board members that testified at the hearing showed a great deal of respect in their dealings with the complainant. The evidence of the board members is that the respondent will likely build complete the ramp by December 31, 2025. Though the condominium board members seem conciliatory in their relationship with the complainant, the lack of diligence in complying with a duty imposed on the respondent by the statute is concerning. With the proposed completion date of December 31, 2025, it would have taken the respondent over 8 years from the time it became aware of the request of the complainant to the time it addresses the request. The respondent has also not given any guarantees that the ramp will be completed by the said time. It is just the time they are hoping to complete by, but they stated, through their counsel, that it would not be any time before then. The tribunal finds this position concerning, especially because of the length of time that has passed since the respondent first became aware of the complainant's requests.

[91] The essence of assessing the factors outlined in this case is to determine how the discrimination has affected the complainant. In determining the issue of damages, the Court had held that "the emphasis should be on how discrimination affected the complainants, not on blameworthiness of respondents, even though the latter might be a factor".[28]

[92] Injury to dignity and self respect is an intrinsic harm. The more serious and longer the discriminatory conduct, the more damaging the harm is to the complainant. The difficulty in assessing such damages is inherent in its intangible nature. Unlike losses relating to income, it is difficult to put a monetary value on injury to dignity and self-respect. In this case, the complainant asked for $20,000 in general damages. I note that this request was made in the context of the complainant's arguments that the respondent should provide her with an assigned indoor parking stall and also construct the ramp at the front entrance. I have already stated that the complainant has not been successful in

[28] *Webber Academy Foundation v. Alberta (Human Rights Commission),* 2016 ABQB 442 para 117

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with her request for an indoor parking stall, as the respondent had accommodated all her requests for an indoor parking whenever the complainant had made those requests.

[93] Notwithstanding that the complainant has been successful in one aspect of the complainant and unsuccessful in the other aspect, I still find it appropriate to set the amount for general damages to dignity and self-respect at $20,000. I reached this conclusion because a remedy for human violations ought to accord with the objectives of the *Act*. Therefore, I am mindful of the current trend of the jurisprudence relating to remedies for human rights violations as well as the current economic realities.

[94] In addition to the amount set for general damages payable by the respondent, I order that:

(i) The complainant should also receive interest on general damages pursuant to the *Judgement Interest Act*, commencing from the time the complaint was filed.

(ii) The respondent shall construct the ramp that is needed by the complainant and people with mobility issues to enter and exit the building and the construction of the ramp must be completed by June 30, 2025.

(iii) All members of the current condominium board shall undergo human rights training by June 30, 2024. If new members are elected or appointed to the board such new members must complete the human rights training within 6 months of their election or appointment if the person(s) so elected did not complete the human rights training prior to their election or appointment.

[95] I remain seized to address any issues in implementing this award.

August 16, 2022

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C. Nduka Ahanonu
Member of the Commission

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Written Submissions

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