HUMAN RIGHTS TRIBUNAL OF ALBERTA

Citation: Engel v The Owners: Condominium Corporation Plan No. 9023695 o/a Glenora Manor, 2023 AHRC 37

BETWEEN:

Zachary Engel

Complainant

- and -

The Owners: Condominium Corporation Plan No. 9023695 o/a Glenora Manor

Respondent

- and -

The Director of the Alberta Human Rights Commission

Director

DECISION

Member of the Commission: Sandra Badejo

Date: March 23, 2023

File Number: N2019/01/0345

Overview

[1] This is a complaint dated November 16, 2018, brought under sections 4 and 5 of the *Alberta Human Rights Act* (the *Act*)[1] (Complaint). In the Complaint, the complainant alleged that the respondent discriminated against him in the area of goods, services, accommodation, or facilities and tenancy on the basis of physical disability. The Director of the Alberta Human Rights Commission (Director) has carriage of this Complaint pursuant to section 29 of the *Act*. The complainant adopted the submissions and examinations of the Director, and provided further submissions on certain issues.

[2] The complainant, who is a full-time wheelchair user because of a physical disability, resides in a residential apartment condo building purchased by his mother, Joan Engel (Engel) in 2009. The complainant's condo unit (Condo) is located in Glenora Manor (Condo Building), which is managed by the respondent's Board (Board). One of the features of the Condo was barrier free access to a balcony.

[3] A reserve fund study commissioned by the respondent in 2016 noted that the exterior sliding patio doors in the Condo Building were in fair to poor condition and had an estimated remaining life of two years. The study recommended that the patio doors be replaced with reinforced PVC sliding doors. In July 2017, the Board voted to levy a special assessment for, among other reserve fund projects, the cost of replacing the patio doors.

[4] Without informing or consulting with the complainant, the respondent purchased inaccessible patio doors to be installed in the Condo. The complainant and Engel requested that the respondent provide the complainant with accessible replacement patio doors. As at the date of this hearing, the respondent has failed to provide any accessible replacement option for the Condo's patio doors.

[5] The complainant alleges that the respondent discriminated against him when it did not accommodate his physical disabilities by providing accessible patio doors for the Condo.

[6] The respondent denies that it discriminated against the complainant. It asserts that it only owes a duty to accommodate Engel, as the owner of the Condo, and not to the complainant. It further asserts that it cannot legally install accessible patio doors.

[7] For the reasons that follow, I find that the respondent discriminated against the complainant in the area of goods, services, accommodation, or facilities on the grounds of physical disability, contrary to section 4 of the *Act*.

[8] I do not find discrimination under section 5 of the *Act*, as the complainant was not the respondent's tenant. The respondent was only providing a service to the complainant in the condominium unit where the complainant resides. The Ontario Human Rights Tribunal (HRTO) in *Jakobek v. Toronto Standard Condominium*

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

Corporation No. 1626,[2] found that the respondent condominium board had discriminated against the complainant, who was residing in a condominium unit, in the area of accommodation on the basis of disability. In arriving at this finding, the HRTO considered the HRTO's case of *Austin v. Clayton Lakeside-Beaton*,[3] where the respondent's obligation to accommodate on the basis of disability was in the provision of service.[4]

Evidence

[9] The Tribunal received documents and heard evidence from the complainant on his own behalf and from Joan Engel (Engel), Lou Badiuk (Badiuk), and Ron Wickman, Expert (Wickman) on the complainant's behalf. The Tribunal did not hear evidence from the respondent.

[10] The current president of the Board, Ann Parker (Parker), attended the hearing as the respondent's representative, but provided no pre-hearing submissions or witness evidence.

Background Facts

[11] The complainant's lower limbs are paralyzed and he uses a wheelchair full-time. In addition, the complainant has limited flexibility and limitations in terms of his power and mobility that affects pushing and pulling objects. The fact that the complainant has a physical disability and uses a wheelchair was well known to the respondent prior to it considering the proposed design for the patio doors. The complainant is a long-time resident of the Condo Building and lives across the hall from a member of the Board. Also, in 2015, the respondent had approved the complainant's request to renovate the Condo to make it more accessible for him.

[12] The patio doors in the Condo have an approximately 2-inch rise threshold or sill, which is also referred to as a rollover threshold in this hearing, and a wide opening. This height and opening allows the complainant to access the Condo's balcony safely and independently.

[13] In November 2017, the respondent's contractors began replacing the patio doors in the Condo Building. The replacement doors included an approximately 5-inch rise threshold and a narrow opening. These doors were not accessible for the complainant. When the complainant and his mother, Engel, became aware of these, they wrote to the respondent, requesting that it accommodate the complainant by providing him with accessible patio doors.

[14] In February 2018, the respondent provided the complainant with a proposed design for accessible replacement patio doors. The respondent indicated that the complainant would be responsible for all associated costs with providing these

[2] *Jakobek v. Toronto Standard Condominium Corporation No. 1626*; 2011 HRTO 1901 (*Jakobek*)
[3] *Austin v. Clayton Lakeside-Beaton*, 2011 HRTO 311
[4] *Jakobek* at para 42

accessible patio doors, with a credit for the cost of labour to install the doors. The respondent refused to consider a cost sharing arrangement and threatened to install the inaccessible patio doors if an agreement could not be reached in a timely manner.

[15] In March 2018, the complainant sought clarifications regarding the specifications of the design proposal so that he could evaluate whether the design would allow him safely access the Condo's balcony. The complainant also proposed a cost sharing arrangement. The respondent never provided those clarifications.

[16] The complainant and Engel followed up with the respondent on several occasions but did not receive any substantive response to their concerns. As of the fall of 2018, the respondent had failed to reply to the complainant's request for clarification or to find a mutually agreeable solution. Accordingly, the complainant commenced this Complaint.

[17] Following the commencement of this Complaint, the complainant continued to seek a solution to his accommodation request. The complainant provided the respondent with several proposed designs for accessible replacement patio doors. The respondent rejected each of these proposals. It did not provide any substantial reason for this rejection apart from a vague concern regarding water ingress. The Director and complainant both sought particulars regarding these concerns, but the respondent did not provide any particulars or supporting information.

[18] The complainant has continued to use the old patio doors that were intended to be replaced in 2017.

Preliminary Matters

[19] On May 24, 2022, the Director applied for a production order against the respondent citing that the respondent had not replied to the Director's request for disclosure of documents and particulars made on March 18, 2022. The Director requested the following documents:

a. All correspondence with the Complainant related to the replacement of his patio door;

b. All documentation, including notes, correspondence and internal documentation, related to Glenora Manor's attempts to seek a replacement door that will accommodate Mr. Engel's mobility device, including any quotes or correspondence with Morrison Hershfield, Precision Contracting and any other company contacted by Glenora Manor;

c. All documentation related to Glenora Manor's concerns regarding water intrusion or flooding that could be caused by Mr. Engel's proposed solution to the patio door replacement, including any expert reports, notes, emails and other documents.

[20] The Director also requested the following particulars:

a. Particulars regarding why Glenora Manor is not able to accommodate the proposed solutions from Durabuilt Windows and Doors and Renovation King;

b. Specifications for the Morrison Hershfield Design that has been proposed by Glenora Manor, including measurements for the proposed rise, length and width of the proposed ramps;

c. Particulars regarding why Glenora Manor cannot accommodate a rollover threshold for the patio door; if Glenora Manor has a concern regarding water intrusion, please include any particulars related to this concern, including any advice obtained related to this concern;

d. The names of all companies or individuals that Glenora Manor has consulted in seeking a solution to the patio door replacement.

[21] This Tribunal issued a case management direction on July 7, 2022, directing the respondent to disclose to the Director and complainant by 4:30 p.m. on July 18, 2022 all documents and particulars requested by the Director in their application of May 24, 2022. The respondent did not comply with this direction. At a case management meeting on August 18, 2022, the respondent stated that it did not comply with this direction because it was under the impression that it had previously disclosed everything in its response to the Complaint. The Director clarified that the majority of the information previously submitted by the respondent was either altered (with notes written by the respondent in the margins) or copy and pasted sections rather than the entirety of the document. The Director sought the original records in their unaltered form.

[22] On August 19, 2022, this Tribunal issued another case management direction, directing the respondent to disclose to the Director and complainant by 4:30 p.m. on August 26, 2022, all documents and particulars it had been directed to disclose in the case management direction of July 7, 2022. It further directed that if all or part of the requested documents and particulars are not produced by the deadline, the Director may seek further direction from the Tribunal, including an extension to the hearing submission deadline and/or approval to submit an addendum to their hearing submissions. The respondent provided some, but not all the directed documents. The respondent did not provide any of the directed particulars. The respondent also did not file and serve its hearing submissions by the deadline of September 12, 2022.

[23] At the start of this hearing, the Director sought an order pursuant to sections 27.5 and 27.10 of the *Bylaws of the Alberta Human Rights Commission*,[5] directing that the respondent shall not be permitted to put forward any witnesses or additional documents at the hearing, given that it had not complied with this Tribunal's directions. The Director also sought an order drawing an adverse inference against the respondent. The Director submitted that it would be fundamentally unfair to permit the respondent to put forward any witnesses or additional documents at the hearing, as the Director has not been

[5] *Bylaws of the Alberta Human Rights Commission*, pursuant to section 17(1) of the *Act*, March 2022

given notice so as to properly respond. The Director agreed that the respondent could participate as an observer, question the witnesses, and make submissions.

[24] The respondent confirmed that it did not intend to call any witnesses. The respondent submitted that it was not aware of the charge against it or what it is guilty of, so it did not know how to respond or what particulars to provide. The respondent further submitted that it could not locate the documents. It did not detail the attempts it had made to locate these documents.

[25] This Tribunal made the following preliminary rulings with respect to the hearing:

(a) The respondent will not be entitled to present any evidence;

(b) The respondent will be entitled to make submissions;

(c) The respondent can properly object and make arguments with respect to the admissibility of any documents;

(d) The respondent will be entitled to cross-examine any of the Director's witnesses; and

(e) The Director can enter some or all of the documents that the respondent had produced by virtue of the case management directions without having to put them through a witness.

[26] Despite being entitled to object and make arguments with respect to the admissibility of any documents and to cross-examine any of the Director's witnesses, the respondent chose not to do so.

[27] In its closing submissions, the respondent began providing evidence, including evidence seeking to impeach and contradict Engel's testimony. At this point, Engel could no longer attend the hearing to rebut the respondent's claims and assertions. The Director objected and argued that the respondent has ignored the rule in *Browne v. Dunn*[6] and that rule should be used to evaluate the evidence that the respondent was seeking to provide. Further, that if the respondent took issue with the facts, it should have asked questions and that an adverse inference ought to be drawn from the fact that the respondent did not do so. According to the rule in *Browne v. Dunn*, which is designed to provide fairness to the parties and witnesses, a party who intends to bring evidence to impeach or contradict the testimony of a witness must present the witness with that evidence and give them an opportunity to explain or answer it while testifying. I found that the respondent had breached this Tribunal's rulings and breached the rule in *Browne v. Dunn*. Accordingly, the respondent was not allowed to continue giving evidence in her submission.

[28] The Director submits that the respondent appears to have taken the position that this Complaint simply amounts to a mere inconvenience that it was not required to take

[6] *Browne* v *Dunn*, 1893 CanLII 65 (*Browne*)

seriously or to participate in, that the respondent's approach to this Tribunal hearing was not made in good faith and that this attitude essentially exemplifies the behaviours that the complainant has been dealing with since the start of this Complaint. Based on this, the Director requests that this Tribunal draw an adverse inference regarding that failure. Further, that, in the absence of evidence to the contrary, the uncontradicted evidence of the Director's witnesses be accepted.

[29] I have the discretion to draw an adverse inference.[7] Given how this case has unfolded, I have chosen to draw an adverse inference where required. I also accept the uncontradicted evidence of the Director's witnesses given the respondent's failure to present any evidence or put forward any witnesses at this hearing.

Issues

[30] The main issue I must determine in this Complaint is whether the respondent discriminated against the complainant by not providing him with accessible replacement patio doors. I will find that discrimination has occurred if the complainant is able to establish a prima facie case of discrimination[8] and the respondent is not able to establish that its conduct was reasonable and justifiable in the circumstances.[9] To establish that its conduct was reasonable and justifiable in the circumstances, the respondent must show that it accommodated the complainant to the point of undue hardship.[10]

[31] In the seminal case of *Moore v British Columbia (Education) (Moore)*,[11] the Supreme Court of Canada set out the test for prima facie discrimination. To demonstrate prima facie discrimination, the complainant must establish, on a balance of probabilities, that:

(a) he has a physical disability;

(b) he has experienced an adverse impact because he was not provided with accessible replacement patio doors; and

(c) his physical disability was a factor in the respondent not providing him with accessible replacement patio doors.[12]

[32] The Director's position was that it has established prima facie discrimination and that the respondent has not justified its discriminatory conduct. The respondent's position was that it had not discriminated against the complainant and therefore, the Complaint should be dismissed.

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[7] *Sunshine Village v Corporation v Boehnisch, 2020 ABQB 692* [*Sunshine Village*] at para 173
[8] *Moore v British Columbia (Education)*, 2012 SCC 61 [*Moore*] at para 33
[9] *Moore* at para 33; *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 S.C.R. 3 [*Meiorin*] at para 54
[10] *Meiorin* at para 54
[11] *Moore*
[12] *Moore* at para 33

[33] Given my finding that this Complaint succeeds, another issue I must determine is the appropriate remedy.

[34] With respect to the first element of the *Moore* test, the respondent acknowledged that the complainant has a physical disability. For the reasons that follow, I find that all three elements of the *Moore* test have been met by the complainant. The complainant has a characteristic that is protected by the *Act*, his physical disability. He suffered an adverse impact when the respondent refused to provide him with accessible replacement patio doors. The complainant's physical disability was a factor in the adverse impact that he experienced and continues to experience.

Analysis

[35] Section 4 of the *Act* provides that:

> 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 the 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 that person or class of persons or of any other person or class of persons.

Has the complainant experienced an adverse impact?

[36] It is not disputed that the respondent is yet to provide the complainant with accessible replacement patio doors. I find that this constitutes an adverse impact.

[37] The complainant paid the special assessment of $1,955.00 levied by the respondent for the replacement patio doors, which have yet to be installed. Replacement patio doors have been installed in the other units in the Condo Building.

[38] The respondent suggested that the complainant should continue using his current patio doors, especially if the complainant is happy with the doors. The complainant testified that he is not happy with these doors, as they are no longer functional. He testified that he struggles to open the doors, particularly from a seated position in his wheelchair. The complainant stated that the doors are drafty during the winter months and that he has resorted to applying tape and weather stripping around the doors to try to block some of the incoming cold air. I note that these are the same doors that the respondent's 2016 study found were in fair to poor condition and had an estimated remaining life of two years.

[39] I therefore find that the complainant experienced an adverse impact, which satisfies the second part of the *Moore* test.

Was the complainant's protected characteristic a factor in the adverse impact?

[40] The third step in the *Moore* analysis requires me to consider whether the complainant's disability was a factor in the adverse impact.

[41] The complainant asserts that his physical disability was a factor in the adverse impact that he suffered and continues to suffer to date. I agree. If it were not for the complainant's disability and his request that the respondent accommodate his disability by providing him with accessible replacement patio doors, the Condo's patio doors would have been replaced when the patio doors in the other units of the Condo Building were replaced.

[42] Accordingly, I find that the complainant's physical disability was a factor in the respondent not providing him with accessible replacement patio doors, which satisfies the third part of the Moore test.

If the complainant has established prima facie discrimination, whether the respondent has justified its discriminatory conduct?

[43] The respondent did not provide any reasonable explanation or justification for its discriminatory conduct against the complainant.[13]

[44] The Director submits that the evidence in this hearing supports a finding that the respondent failed to accommodate the complainant's physical disability to the point of undue hardship.

[45] The respondent's duty to accommodate the complainant up to the point of undue hardship consists of two elements - the procedural element and the substantive element.[14] In order for the respondent to maintain that it cannot provide substantive accommodation without incurring undue hardship, it must first show that it has explored accommodation options.

[46] In *British Columbia (Public Service Employee Relations Commission) v BCGSEU (Meiorin)*, the Supreme Court of Canada defined undue hardship as 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.[15] In the context of persons with disabilities, the Supreme Court of Canada in *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, held that the point of undue hardship is reached when reasonable

[13] *Moore* at para 33
[14] *Meiorin* at para 66
[15] *Meiorin* at para 38

means of accommodation are exhausted and only unreasonable or impractical options for accommodation remain.[16] The Supreme Court in that case further held that:

> The scope of the right of persons with disabilities to be free from discrimination will depend on the nature, legitimacy and strength of the competing interests at stake in a given case. These competing interests will inform an assessment of what constitutes reasonable accommodation.[17]

[47] In *Andruski v. Strata Plan LMS3199 (Andruski)*, the British Columbia Human Rights Tribunal (BC Tribunal) considered a condominium corporations' duty to accommodate a resident with a sensitivity to scents. The BC Tribunal set out a number of considerations to guide strata's in their accommodation obligations as follows:

> In Leary, the Tribunal set out a number of steps to guide stratas in navigating their accommodation obligations. The Tribunal said that a strata council must, among other things:
>
> – Address requests for accommodation promptly, and take them seriously. A strata should consider how it will process accommodation requests on a timely basis, including between council meetings. For example, the strata council should ensure that someone is responsible for receiving such requests and promptly beginning the accommodation process.
>
> – Gather enough information to understand the nature and extent of the need for accommodation. The strata is entitled to request medical information that is related to the request for accommodation. It is not entitled to any more information than is strictly necessary for this purpose. If the strata requests further medical reports, it should be at the strata's expense.
>
> – Restrict access to a person's medical information to only those individuals who are involved in the accommodation process and who need to understand the underlying medical condition. The strata council should keep medical information confidential from the general membership of the strata.
>
> – Obtain expert opinions or advice where needed. For second-hand smoke, a "sniff test" undertaken by another strata member will rarely be sufficient to evaluate the extent of a problem with smoke in a suite. The strata may have to retain air quality experts. The strata should pay for any tests or expert reports.

[16] *Council of Canadians with Disabilities v VIA Rail Canada Inc.,* 2007 SCC 15 [*Council of Canadians with Disabilities*] at para 130
[17] *Council of Canadians with Disabilities* at para 127

– Take the lead role in investigating possible solutions. Co-operate with the person seeking accommodation to constructively explore those solutions.

– Rigorously assess whether the strata can implement an appropriate accommodation solution. In doing so, the strata may have to consider the financial cost and competing needs of other strata members with disabilities. In some circumstances, a solution may not be possible without the strata suffering an undue hardship. In that case, the strata council should document the hardship and test its conclusion to ensure there is no other possible solution.

– Recognize that the strata cannot, through its membership, contract out of the Human Rights Code. This means that a strata cannot rely on a vote of its membership to deny an accommodation.

– Ensure that the strata representatives working on the accommodation are able to approach the issue with an attitude of respect. Members of a strata council whose behaviour risks undermining genuine efforts at co-operation and conciliation may need to be removed from the process. (para. 69).[18]

[48] I adopt the *Andruski* considerations as relevant to the Alberta legislative context.

[49] The complaint in *Cush v Condominium Corporation No 7510322* (*Cush*),[19] is analogous to this complaint. *Cush* involved a condo corporation who was requested to accommodate a complainant by, among other things, installing a ramp at the front entrance of the building.[20] In that case, this Tribunal considered what obligations the condominium corporation had to accommodate an occupant who suffered from a physical disability that restricted her mobility. The respondent in *Cush* argued that due to budgetary constraints, it could not build the ramp until December 2025. The respondent had obtained some quotes from different contractors but had concerns about the scope of work required, the adequacy of the proposal to meet the safety concerns of the complainant and the cost of the proposals. In holding that the respondent had not reached the point of undue hardship,[21] this Tribunal held that the 5 years that the respondent had taken amounted to a breach of the *Act*.[22]

[50] I agree with the Director in this case that the respondent failed in both its procedural and substantive duty to accommodate the complainant. The respondent had a duty to engage in the accommodation process in good faith. This required the respondent to take timely and reasonable steps to seek an accommodated solution. The respondent utterly failed in this duty. It is clear from the record, as well as documents referenced in the respondent's response, that the respondent was aware of

[18] *Andruski v. Strata Plan LMS3199*, 2017 BCHRT 62 at para 39 [*Andruski*]
[19] *Cush v Condominium Corporation No. 7510322 o/a Renfrew House*, 2022 AHRC 87 [*Cush*]
[20] *Cush* at para 75
[21] *Cush* at para 78
[22] *Cush* at paras 75 and 87

its obligation to accommodate the complainant but chose not to accommodate him due to concerns regarding cost. Yet, the respondent raised fictitious concerns regarding water ingress that are not supported by any evidence adduced during this hearing. The respondent ultimately misrepresented to the complainant, the Director, and this Tribunal, the steps that it had taken to seek an accommodated solution.

[51] The respondent did not reach the point of undue hardship or show that it would suffer any hardship. Even if it had shown that it would suffer an undue hardship, I note that in some circumstances, a solution may not be possible without the respondent suffering an undue hardship.[23] The respondent did not show that it had exhausted reasonable means of accommodation and only unreasonable or impractical options for accommodation remained. The respondent did not address the complainant's request for accommodation promptly or take it seriously. It continued to neglect the complainant's requests throughout these proceedings and treated him with disdain. Further, it did not obtain expert opinions or advice regarding the complainant's need. The respondent relied on the lay opinion of one of its members to reject the complainant's proposals. It did not take the lead role in investigating possible solutions and did not co-operate with the complainant to constructively explore possible solutions. The respondent did not rigorously assess whether it could implement an appropriate accommodation solution and did not show whether it considered the financial cost and competing needs of other occupants of the Condo Building with disabilities.

Over five years have elapsed since the respondent first became aware that the complainant required accommodation

[52] The respondent states that it was not aware that the complainant required accommodation until it received Engel's letter in November 2017, after it started installing the replacement patio doors. Even if I accept this statement, which I do not, it has been over 5 years since the respondent became aware of the complainant's requirement, yet it has not provided the complainant with accessible patio doors. The respondent has done nothing other than to commission a form of accessible patio doors design that it refused to clarify, and to bring up vague concerns about water ingress. I find that the respondent was also aware of the complainant's request for accommodation prior to November 2017, through its building manager, A. Hossain (Hossain).

[53] Like the complainant, Badiuk is a long-time resident of the Condo Building; he has a physical disability and uses a wheelchair. Badiuk testified that his disability was well known to the Board. He was a member of the Board for ten years and attended the 2017 Annual General Meeting of the Board in person and used a wheelchair to do so. Badiuk further testified that during those ten years, he was involved in the Board's discussions to replace the patio doors. Badiuk testified that when he was about to resign from the Board in 2010, he informed the Board that he would require wheelchair accessible doors. Brent Smith, who was the -president of the Board at the time, assured Badiuk that he would receive wheelchair accessible doors. Smith remained a member

[23] *Andruski* at para 39

of the Board during these events and was the main contact for the Board during the patio doors replacement project.

[54] Engel testified that once she became aware of the respondent's intention to replace the patio doors, she immediately went to Hossain, whom she had a good relationship with. She told him that he should remember that the complainant is going to need accessible patio doors. Hossain assured her that he would bring that information to the respondent's attention. Engel testified that when she paid the special assessment to Hossain in person, she again told him that any replacement patio doors would need to be accessible for the complainant. Badiuk also testified that when he paid his special assessment to Hossain in person, he reminded him that Badiuk would need accessible replacement patio doors. He testified that Engel first brought the inaccessible replacement patio doors to his attention.

[55] The complainant, Engel and Badiuk were all consistent in their testimonies that the respondent never informed them that it had any issues with their request for accessible patio doors prior to starting the patio doors replacement project. They all testified that their understanding was that the respondent was going to replace the patio doors with the same type of doors and were surprised to learn that this was not going to be the case. The respondent never contacted the complainant and Badiuk to get additional information regarding their needs. Instead, the only evidence before me is that the respondent simply purchased inaccessible patio doors for all units.

[56] Engel testified that when she first saw the new patio doors being installed in another unit on November 21, 2017, she was upset and is still very upset. She wondered what she had done to cause the respondent's decision and did not know what to do to stop the respondent from installing the inaccessible patio doors. It was difficult for her to break the news to the complainant, as she knew how important the accessible patio doors were to him. When Engel and the complainant were looking for a home for the complainant, they chose the Condo Building particularly because of the accessible patio doors and its proximity to Engel's residence. The complainant relies on Engel to assist him with maintaining independent living in the Condo. Thus, it was important that he live close to Engel's residence. Engel testified that they could not find a unit with such accessible patio doors in her condo building and that the Condo Building was the closest building with accessible patio doors. She knew that the Condo was important to the complainant, as he would often use the balcony for fresh air and to barbeque. Engel testified that she sat in her car and wrote the first email to the respondent, requesting that it install accessible patio doors, as the proposed inaccessible door was going to negatively impact the complainant.

[57] Badiuk testified that he gave his consent for the complainant and Engel to include him in their request for accessible replacement patio doors, as the respondent proposed to install the same inaccessible patio doors in his unit. While Badiuk's circumstances are not before me, his testimony, uncontested by the respondent is informative of what occurred.

[58] Engel testified that in her conversation with Hossain, where she raised her concern regarding the proposed patio doors design, he informed her that the respondent considered a lower threshold option and decided not to proceed with that option due to cost. While Hossain did not testify, I accept this hearsay evidence since it is undisputed that ultimately, the respondent did not replace the patio doors.

[59] When it decided to proceed with the patio sliding door replacement project, the respondent's intention was to replace "as is". The assembly would replace the previous patio doors with the same overall dimension size, but it would have superior sound proofing and energy efficiency compared to the old patio doors. In addition, the life expectancy of the new patio doors would be much longer due to lighter material and updated tracking.

[60] However, I note from its response, that after the respondent considered Morrison Hershfield's proposed patio doors designs, the respondent unanimously voted to approve the inaccessible patio doors design option. This was despite the respondent's knowledge of the complainant's disability. Morrison Hershfield had expressly noted in its proposed patio doors design of October 7, 2016, that the respondent could order narrow doors or wide doors. It pointed out that the narrow doors will hinder balcony accessibility for mobility devices, but will not be as hard on the hardware, thereby making them last longer. It further pointed out that the wide doors have better accessibility for mobility devices, but will make the hardware wear quicker, given its weight. The respondent's decision to approve the inaccessible patio doors design option was therefore, clearly a cost consideration.

[61] I draw an adverse inference from the fact that the respondent did not call Hossain as a witness at this hearing or put forward any evidence. I accept that cost is the reason that the respondent failed to purchase accessible patio doors for the complainant during the patio doors replacement project.

[62] The respondent continued to be cognizant of the accessibility issue with its choice of patio doors, yet it chose to proceed with the same. The respondent's own response to the Complaint clearly indicates that prior to the installation of the patio doors in November 2017, the respondent was aware of the threshold concerns and in fact had asked its designer to prepare new shop drawings. In the respondent's timeline of events in its response, we note the following:

> August 16, 2017 **Threshold concerns forwarded to MH - new shop drawings prepared for the lowest possible sill height.**
>
> The Board had concerns with the height of the threshold, as we were expecting similar height to the current patio doors.

[63] The respondent then received new shop drawings. The respondent's response indicates as follows:

> August 31, 2017 Received new shop drawings (dated August 28) with lower sill, **but still showing door opening of 34 15/16**
>
> Aug 2017 MINUTES …. The mock up of the sliding patio door was done in 309 ... The resident in 309 has emailed to say how great it looks and express their happiness. Morrison Hershfield has requested Board approval for a 4" frame height. Brent made a motion recommended [Sic] that we go ahead with S.V.01.02. Motiejus seconded. Unanimous vote in favor.

[64] The complainant testified that a door opening of 34 inches would have been sufficient in terms of the opening of the Condo's patio doors. A lower sill and a 34-inch opening design option was available to the respondent, but it rejected the same without seeking the complainant's input or asking for his specifications.

<u>The respondent failed to take significant steps to accommodate the complainant or to adequately keep him informed of the accommodation process</u>

[65] The complainant and Engel immediately reached out to the respondent when they learned about its plan to install inaccessible patio doors, to express their concerns and request accommodation for the complainant in the form of accessible patio doors. They informed the respondent that a 25-inch opening and a higher threshold will restrict the complainant and anyone with mobility issues. Engel had several conversations with Hossain and wrote to the respondent in November and December 2017, seeking a safe and accessible solution for the complainant. To start the conversation, Engel provided several proposals to the respondent for its consideration. Engel informed the respondent that the complainant was open to replacement patio doors with a low rise and a wide opening, similar to the ones currently in the Condo.

[66] On February 20, 2018, the respondent provided a proposed accessible patio doors design option for the complainant, Engel, and Badiuk's review. The respondent indicated that the complainant would be responsible for all costs associated with providing accessible doors, with a credit of $832.00 for the cost of labour to install the doors. The respondent stated that the accessible patio doors provide an extra cost benefit to the complainant and Badiuk, the cost of which it wished to recover. It refused to consider a cost sharing arrangement and calculated the total cost of providing the accessible patio doors for the complainant's Condo and Badiuk's suite as being $20,925.00. This would equate to approximately $10,500 for the set of accessible patio doors for the complainant.

[67] The proposed accessible patio doors design consisted of many pages of technical drawings and specifications, that the complainant and Engel did not have the expertise to interpret. The complainant and Engel asked the respondent to clarify the specifications in the proposed design, so that they could evaluate whether the complainant could use the patio doors safely and independently. The complainant was concerned about his ability to safely open 42-inch-wide fiberglass out-swinging patio doors from a ramp position. The complainant and Engel also proposed a cost sharing arrangement, where they would pay $3,000 towards the cost of the accessible patio

doors. This would be in addition to the special assessment of $1,995 they had already paid.

[68] Despite several requests, the respondent never provided the clarification that the complainant and Engel sought. Importantly, the respondent never advised them that it was refusing their request. The complainant and Engel followed up with the respondent to no avail. In April 2017, they sought an update from a member of the Board in the hallway of the Condo Building. The member did not provide them with an update, but only asked if they had not yet received a response. After the complainant and Engel followed up with Hossain at the end of April 2018, he informed them that the respondent had asked him not to continue speaking with them.

[69] Engel further reached out to the respondent through a former president of the Board, J. McCready. She requested a response and a meeting with the president of the Board at the time, Corey Whaley. McCready's email of July 20, 2018 to Engel, informing her that the respondent was not interested in meeting with or accepting her contacting information, reads:

> To my knowledge, the condo board has not received any legal advice. I now think the board has been relying on what Brent said and I assume he hasn't consulted with the board's lawyer or any lawyer. .Brent and Corey, who appears to trust everything Brent says, seem to think we should let sleeping dogs lie until you make some sort of move. More than four months have gone by since your March letter and since nothing's been done, can one expect to see anything happen on our end?.

[70] Badiuk testified that despite his request, the respondent did not provide him with accessible replacement patio doors. He could not afford the costs of the proposed accessible patio doors and the respondent had not provided the clarification that the complainant and himself had sought regarding the design. After a period of about 2 years, when he had to move to a long-term resident outside the Condo Building, Badiuk consented to the installation of the inaccessible patio doors. Badiuk stated that once he consented, the respondent, who had not been friendly to him prior since his request for accommodation, became nice to him.

[71] The complainant provided photo and video evidence, including a short video showing the complainant by the inaccessible patio doors installed in Badiuk's unit. The short video showed that the complainant could not independently pass through the patio doors, as they were too high and narrow for him in his wheelchair.

[72] The reality for individuals with disabilities is that they cannot afford to "let sleeping dogs lie" when their access is impeded. Even when they must "make some sort of move" prior to being accommodated, it should not be an over 5-year move. I find that the duty to accommodate means that the respondent owed it to the complainant to consult with him prior to making a change that would impede his access. They also owed a duty to the complainant to promptly provide reasonable accommodation to him when requested.

The respondent failed to communicate with the complainant and Engel in a respectful manner

[73] Individuals who require accommodation have a duty to advise the other party of their medical needs and participate in the accommodation process.[24] The fact that a party attempts to advocate on their own behalf for accommodation cannot be used as a reason for terminating the accommodation process. This is what the respondent did here. It used the complainant's attempt to advocate on his behalf to terminate the accommodation process.

[74] In one of their many correspondence to the respondent requesting accessible patio doors for the complainant, the complainant and Engel referenced the requirements of the *Condominium Property Act*[25] and the *Alberta Building Code*.[26] Based on this reference, during these proceedings, the respondent made much about not being obliged to provide barrier free patio doors to the complainant because the Condo Building was built in 1969. It stated that it could not comply with the requirements of the *Alberta Building Code* regarding barrier free design.

[75] The complainant and Engel testified that they felt ignored by the respondent. They both testified about their encounter with Smith in the lobby of the Condo Building on September 14, 2018. When the complainant and Engel sought to speak with Smith regarding the patio doors issue, he was angry, raised his voice at them and dismissed them. Engel testified that Smith told them that he does not talk to people who retain lawyers. He said that the reason the complainant could not have accessible doors was because he was aware, as a former construction manager, that the *Alberta Building Code* did not apply when the Condo Building was built in 1969. He indicated that the Condo Building was not built as a barrier free building in 1969. He told them that they would have to bear the cost of any change to the patio doors replacement project.

[76] When the complainant tried to tell Smith why it was important for him to have access to his balcony, the complainant and Engel both testified that Smith did not look at the complainant, did not respond to him, and did not acknowledge him. The complainant and Engel ended the discussion with Smith, as it was getting heated.

[77] Following the commencement of this Complaint, the complainant continued to seek a solution to his accommodation request. The complainant provided several alternate proposals for accessible patio doors to the respondent, all of which the respondent rejected. In its correspondence with the complainant and Engel, it appears that the reason the respondent rejected these proposals was due to hypothetical concerns about water ingress that were raised by Smith. In a draft letter dated July 26, 2021, prepared by the respondent in response to the complainant's proposed

[24] *Andruski* at para 39; *Collins v. Essex Condominium Corporation No. 35*, 2018 HRTO 333 [*Collins*] at para 28
[25] *Condominium Property Act*, RSA 2000 c-22
[26] *Alberta Building Code*, 2014 Volume 2

accessible design from Renovation King Ltd. – Ply Gem Building Products (Renovation King) and which the complainant testifies that he never received, D. MacKenzie, a member of the Board, writes:

> Thank you for your reply and for obtaining a quote from Renovation King. The quote seems reasonable and practical.

and then it goes on to list some questions.

[78] In responding to this draft response, Smith writes:

> "The quote seems reasonable and practical". I doubt it greatly. I do however agree with your list of questions. It appears that the assembly is wood based (MDF and Masonite) which more or less turns to mush when exposed to water for any period of time.

[79] Smith is not an expert in accessibility. Yet the respondent relied on his lay opinion in rejecting a legitimate proposal for accessible patio doors put forward by the complainant and Engel. The respondent was required to do more than just rely on the lay opinion of one of its Board members. If the respondent had any concerns regarding water intrusion, they should have adequately addressed this by consulting an expert. Consulting with Smith was not sufficient to address this concern.

[80] The respondent unreasonably took the position that the complainant was responsible for the full cost of any accessible patio doors. I note that the complainant even offered to share the increased cost differential for the accessible patio doors, although such cost sharing is not supported by other similar cases and ought to have been borne entirely by the respondent. I also note that the cost of the proposed accommodation was modest. Based on the Renovation King quote, accessible patio doors cost approximately $6,000. With the patio doors replacement project being approximately $60,000 under-budget and the respondent's available large reserve fund, there is no evidence to support that the respondent could not have accommodated the complainant by providing him with accessible patio doors.

[81] Despite several requests by the Director, the only external piece of evidence that the respondent produced to support its water intrusion concern is an e-mail from Morrison Hershfield of September 7, 2021, where it appears to be commenting on a design proposal prepared by Renovation King for the complainant. In that email, Morrison Hershfield commented that a barrier free threshold may be achievable, but a water diversion strategy should be incorporated at the sill.

[82] Following this email, the respondent provided a correspondence dated October 18, 2021 to the complainant and this Tribunal. In that correspondence, the respondent represented that despite its efforts, it was impossible to accommodate the complainant by providing him with a barrier free design, that is, accessible patio doors. It stated that it had consulted with all manner of professionals relevant to this issue and was facing obstacles for which there would have to be a compromise. The respondent asserted

that it could not legally install a balcony door with a rollover threshold. It cited concerns regarding potential water intrusion, the significant repair costs for water damage, and building code issues. The respondent wrote in argument:

> Water ingress to multi-family dwellings has been the single most costly cause of damage nationwide. Repair costs are always significant, most often resulting in five-figure special assessments levied on condominium owners. If we were to install a balcony door with rollover threshold in violation of building codes, it would not be covered by our building envelope insurance, and we would be open to owner lawsuits.
>
> On the advice of the City of Edmonton, Building Envelope Engineers, and Architects specializing in barrier-free design, the only viable alternative in our building is a design very similar to that which was installed in the rest of the building with approximately a five-inch rise from the threshold.

[83] I note that the respondent has not provided any evidence whatsoever at this hearing in support of any of the statements and assertions in this October 18, 2021 correspondence.

[84] Given the respondent's representation in its correspondence of October 18, 2021, the Director obtained an expert report dated June 23, 2022. This report was prepared by Ron Wickman, an architect who specializes in accessible design and who is a current member of the Alberta Building Code Barrier Free Sub-Council. Wickman's interest and expertise are in barrier free design, that is, accommodating the needs of individuals with disabilities. Wickman's report confirmed that it was possible to install accessible patio doors for the Condo. At the hearing, Wickman was qualified as an expert in the area of barrier free and accessible building design and architecture.

[85] In preparing his report, Wickman reviewed, amongst other things, the respondent's October 18, 2021 correspondence. In his report, Wickman stated that he focused on these three areas.

> 1. The construction techniques and technology of patio doors that come complete with barrier free thresholds.
>
> 2. Comments and recommendations on the Alberta Building Code in general and directly relating to this specific building.
>
> 3. Comments and recommendations to help prevent water intrusion from outside into a dwelling unit for this specific building.

[86] Wickman further noted in his report that:

> We have an ever-increasing population of persons with disabilities in the world, especially considering the tremendous increase in our elder's population. For this reason, many product suppliers have invested time and

> money into researching products that can provide a more universal appeal to the market. This can be said for the suppliers of exterior doors. Most door suppliers now have standard doors and patio doors that come complete with low profile thresholds that afford users safe and independent wheelchair access. These doors have also been specifically designed to prevent water infiltration from the outside.

[87] In response to the respondent's statement that it would violate the provisions of the *Alberta Building Code* if it were to install patio doors with rollover threshold, Wickman noted the following:

> I am unaware of any such Alberta Building Code requirement and note that there is no official Building Code reference. I have asked others who work directly with the Alberta Building Code, and I have not found anyone who knows of such a Code requirement.

[88] Wickman provided very clear evidence, which he was not questioned on, that he has been involved in many building projects and it is possible to provide accessible patio doors for the complainant. He testified that he has done a lot of research in the area of water intrusion and that it just takes a little more thought to prepare an accessible door that will not cause water intrusion. He concluded that preventing water from entering a dwelling from the outside through an exterior (patio) door with a barrier free low-profile threshold can be constructed in older buildings like the Condo Building.

[89] He testified that accessible design focuses on persons with disabilities. That the term "barrier free" is the idea of removing barriers for persons with disabilities. He stated that barrier free design is a term used more in Canada and relates specifically to the *Alberta Building Code*. He testified that his understanding of the *Alberta Building Code* is that its barrier free requirements apply to commercial buildings and not to residential buildings. He is not aware of any such prohibitions and has not found any evidence that there is a code regarding this type of threshold restrictions.

[90] Wickman testified that in his practice, he typically designs a threshold of 13 millimeters, which is half an inch, for accessibility, which would not require a ramp, as every inch of rise at the threshold would require a one-foot ramp. He testified that he tries not to go over the 2-inch threshold even in a residential building context, as anything over 2-inches is difficult for an individual with a disability to navigate. He stated that in his experience, such individuals can navigate a 2-inch rise without a mini ramp and water has never been an issue.

[91] I accept Wickman's testimony that the respondent could have installed new custom patio doors, designed with a low-profile threshold that also prevents water infiltration.

[92] Lastly, Wickman testified that based on his experience, the average cost of purchasing and installing accessible patio doors with a low profile threshold is not

significantly more than the cost of purchasing and installing regular patio doors. This would seem to accord with Renovation King' approximately $6,000 quote for accessible patio doors.

[93] I accept Wickman's testimony and find that the respondent has provided no reasonable excuse, or valid undue hardship argument, to prevent it from installing accessible replacement patio doors for the Condo.

[94] I find that the respondent has failed to demonstrate that it accommodated the complainant's disabilities to the point of undue hardship. Save for the initial design proposal, the respondent did not search for reasonable accommodation for the complainant. The respondent did not respond to the complainant's request for clarification of the design specification. The respondent indicated in its response that the specifications were clear, yet its own representative could not read the specifications at this hearing. I accordingly find that the contravention of the *Act* was not reasonable and justified in the circumstances.

[95] The respondent asserts that the provisions of the *Act* only apply to condominium owners and not its residents. It argues, therefore, that it owed a duty to accommodate Engel, as the owner of the Condo, and not the complainant. Therefore, Engel, and not the respondent, had the duty to accommodate the complainant. The respondent did not provide any authorities in support of these submissions. The Director strongly disputes this assertion as a restrictive interpretation that is contrary to the Supreme Court of Canada's direction on the interpretation of human rights. Further, the Director submits that this does not represent the current state of the law regarding the obligations of condominium boards. The Director asserts that even if the respondent's submission is accepted, Engel discharged that duty by requesting that the respondent ensure that any replacement doors were accessible.

[96] The Supreme Court of Canada has clarified that any interpretation of human rights must be inclusive and liberal, in keeping with the quasi-constitutional nature of those rights. Rigid and narrow interpretations are to be avoided.[27]

[97] This Tribunal has jurisdiction with respect to the activities of condominium corporations.[28]

[98] Under the *Act*, accommodation applies to occupants of a condominium unit, a cooperative housing unit or a mobile home site.[29] The duty to accommodate also applies to residents who are not owners.[30] In *Jakobek*,[31] the HRTO found that the respondent

[27] *Canada (Canadian Human Rights Commission)* v *Canada (AG)*; 2011 SCC 53 [*Canada (Canadian Human Rights Commission*] at paras 33 and 62
[28] *Ganser* v *Rosewood Estates Condominium Corporation*, 2002 AHRC 2 at pages 16 and 17
[29] The *Act* at s 44(1.1); *Matthews v. Westphal Mobile Home Court Limited* [*Woodbine Mobile Home Park*], 2005 NSHRC 5 at paras 85 - 89
[30] *Polito v. Briarlane Property Management Inc.*, 2019 HRTO 708 [*Polito*] at paras 28, 39, and 63
[31] *Jakobek* at paras 19 and 46

condominium board had discriminated against the complainant, who was residing in a condominium unit owned by the complainant's son and daughter-in-law.

[99] In *Collins v. Essex Condominium Corporation No. 35*, the HRTO dealt with a complaint where the complainant resided in her sister's condominium. The complaint was sent forward to the Tribunal notwithstanding this fact. The Tribunal noted: "Once a person seeking an accommodation makes the need for accommodation known, the person from whom the accommodation is requested is under a duty to consider the request."[32]

[100] The Director further argues that the *Act* is quasi-constitutional and trumps the *Alberta Building Code* to the extent that it is inconsistent with the *Act*.[33] The Director states that the *Alberta Building Code* only sets out a minimum standard for buildings and does not restrict the respondent from doing more, where appropriate. For instance, in response to the complainant's claim that he wants to be able to access the Condo's balcony in the event of a fire, the respondent submits that the balcony is not a place of refuge under the *Alberta Building Code*. With respect, this is not a relevant consideration. The complainant was not concerned about whether his balcony was a place of refuge. What he was concerned about was being able to go to his balcony to flag down first responders in the event of a fire.

[101] The respondent's claim that it does not owe a duty to accommodate the complainant does not accord with its action to date. The respondent had previously accommodated Engel's request to renovate the Condo, to create more accessibility for the complainant. The respondent has also been communicating with both the complainant and Engel regarding the patio doors issues. It noted the complainant's need for accommodation and discussed providing the same to him at its meetings. Lastly, the respondent's July 20, 2017 correspondence requesting the special assessment, and its correspondence of December 1, 2017 confirming that it had commissioned a barrier free design, were addressed to both the complainant and Engel. I note also that the respondent repeatedly reminded Engel that she had no ability to alter the doors without its authorization, as they are common property. Thus, it is not open to the respondent to now assert that Engel, and not itself, has a duty to the complainant.

[102] Based on the judicial authorities and the facts of this case, I find that the respondent owes a duty to accommodate the complainant as the occupant of the Condo.

[103] Given my findings that the complainant has met all three elements of the *Moore* test and my finding that the respondent has not provided any justification for its discriminatory conduct against the complainant, I find that the respondent discriminated against the complainant in violation of section 4 of the *Act*.

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[32] *Collins* at para 28
[33] *Canada (Canadian Human Rights Commission)* at paras 33 and 62

Remedy

[104] Having found that a violation of the *Act* occurred, I must determine the appropriate remedy to award in these circumstances.

General Damages

[105] The Director sought general damages in the amount of $25,000.00. The complainant claims that the respondent's actions were deliberate and that he was humiliated as a result. He claims that the injury to his dignity persists to date. The complainant and Engel outlined the impact of the respondent's actions on the complainant.

[106] In *Sunshine Village v Corporation v Boehnisch* (*Sunshine Village*),[34] the Alberta Court of King's Bench opined that discrimination can alter people's lives and its injury to the victim's dignity can leave a lasting psychological legacy.[35] That court cautioned that damages shouldn't be so low as to essentially treat the complainant's mistreatment and resulting anguish as virtually meaningless and so perpetuate the discriminatory conduct.[36]

[107] In its analysis of the complainant's claim for general damages, this Tribunal in *Cush*, considered the Alberta Court of Appeal case of *Walsh v Mobil Oil Canada* (*Walsh*).[37] It held that the principles outlined in that case with respect to damages for loss of income was applicable in the assessment of general damages. Following *Walsh*, the Tribunal in *Cush* held as follows:

> …On the award of general damages, the Court of Appeal in *Walsh* further held that
>
> > [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

[34] *Sunshine Village*
[35] *Sunshine Village* at para 192
[36] *Sunshine Village* at paras 190,195; *Walsh v Mobil Oil Canada*, 2013 ABCA 238 [*Walsh*] at para 32
[37] *Walsh*

> discrimination. To the extent that a complainant has experienced particular emotional difficulties as a result, this will likely increase the amount of the award.[38]

[108] The Tribunal in *Cush* further noted that:

> 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.[39]

[109] In *Cush*, the respondent took a lot of steps in its attempt to accommodate the complainant, yet this Tribunal held that the respondent had not reached the point of undue hardship and awarded the complainant $20,000 in general damages. In assessing those general damages, the Tribunal noted that five years was a significant delay and impacted the dignity of the complainant. The Tribunal also noted in that case that the board members had showed a great deal of respect in their dealings with the complainant.[40] Here, the respondent has significantly delayed responding to the complainant. Five years have passed since the complainant first sought accommodation from the respondent. This has impacted the complainant's dignity and has caused him discomfort in his own home. Unlike *Cush*, the respondent in this case has not treated the complainant with respect. They ignored his several requests for a response and his proposals for accommodation. They dismissed his request to have an audience with them. They made him feel as if he did not exist. Rather than respond to his requests, they chose to "let sleeping dogs lie".

[110] The complainant and Engel testified about the impact of the respondent's actions on the complainant. The complainant testified that it was troubling that, with the respondent's proposal, he would no longer be able to use his balcony. He said it was mostly a safety issue for him, especially in the event of a fire. Being on the fourth floor, the complainant testified that it is important that he has access to his balcony to flag down first responders, for fresh air and to barbeque. He testified that this whole situation and not knowing the outcome has been very stressful for him. He stated that it takes a lot for him to write an email and Engel has been assisting him. Yet, he has had sleepless nights and is constantly in a state of worry regarding how the respondent would receive and respond to those emails. He does not feel that the respondent respects him or reads his correspondence - it is like talking to a brick wall.

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[38] *Cush* at para 84
[39] *Cush* at para 85
[40] *Cush* at para 90

[111] The complainant further testified that he had to drop out of a work training, as he could not focus because of this issue. He testified that he is anxious about leaving the Condo to pick up his mail or moving around the Condo Building, for fear of encountering members of the Board, especially after the incident with Smith. The complainant testified that he is concerned for Engel's safety at the respondent's annual general meetings, given that the respondent had disclosed information about this Complaint to the other owners in the Condo Building. He concluded that the patio doors meet the respondent's need but not his.

[112] Engel testified that she observed the stress, fear, and anxiety that the respondent's decision and the entire situation caused the complainant. She testified that the complainant told her he was devastated when she informed him that the respondent had entirely ignored his request for accommodation and had purchased inaccessible doors to be installed in the Condo. Engel stated that the complainant once told her that this is the most disrespected he has ever felt in his life.

[113] Engel further testified that the Condo was supposed to be the complainant's opportunity to live independently, but he no longer sees the Condo as his home, as someone else is making the decision about the Condo for him. She testified that the complainant feels unheard and bullied.

[114] The complainant and Engel also testified that they felt threatened by the respondent's statement that it would install the inaccessible patio doors it had purchased if an agreement could not be reached in a timely manner.

[115] The reality of life for the complainant is that navigating physical spaces is challenging. He has encountered barriers to accessibility all his life. He should not have to encounter such barriers in his own home. The respondent's actions have caused the complainant much distress with the thought that he would have to also navigate such barriers in his own home. The respondent is seeking to take away the basic human need for autonomy from the complainant. When all the complainant was looking for was to be able to go out onto his balcony like any other resident, the respondent basically told him that that was a privilege that he would have to pay for.

[116] The facts of this case and the weight of judicial authorities lend to an award in the amount proposed by the Director. I accordingly award the complainant the sum of $25,000.00 in general damages for injury to dignity.

Cost

[117] The Director seeks an order directing that the respondent pay all costs associated with the expert report and testimony of Wickman. The Director is also seeking an order directing the respondent to pay costs, in the amount of $5,000, for failure to comply with this Tribunal's deadlines and directions and prolonging the hearing process.

[118] I am unable to consider the Director's request for costs, as it did not itemize the expert's costs, what the $5,000 costs is related to, and under what authority it is seeking these costs. I will require this information to consider these requests.

Pre-Judgment Interest

[119] I award pre-judgment interest between the date the Complaint was filed and the date of this award. Both the courts and this Tribunal regularly award pre-judgment interest on monetary awards in accordance with the *Judgment Interest Act*.[41] Pre-judgment interest addresses the time between filing the Complaint and the release of the final decision and is appropriate here.

Order

[120] The Complaint has merit and I make the following orders:

a) The respondent shall pay the amount of $25,000.00 to the complainant, as general damages for injury to dignity;

b) The respondent shall pay judgment interest on all general damages to the complainant, commencing from the date the complaint was filed, pursuant to the *Judgment Interest Act*;[42]

c) The respondent shall install accessible patio doors in the Condo at its own expense forthwith and in any event no later than six months from the date of this decision;

d) All members of the current condominium Board shall undergo human rights training by September 30, 2023.; and

e) If the Director still seeks costs of this Complaint from the respondent, the Director shall provide the respondent and this Tribunal with its written submissions regarding costs, as per Bylaw 32, within 7 days of the date of this decision. Within 7 days of the date of receiving the Director's costs submissions, the respondent shall provide the Director and this Tribunal with its written submission in response to the Director's costs submissions.

March 23, 2023

_____
Sandra Badejo
Member of the Commission

[41] *Judgment Interest Act,* RSA 2000, c. J-1 [*Judgment Interest Act*] and *Judgment Interest Regulation*, AR 215/2011 [*Judgment Interest Regulation*]
[42] *Judgment Interest Act* and *Judgment Interest Regulation*

Appearances

Zachary Engel, Complainant
Self-represented

Ann Parker, Representative
For the respondent, Condominium Corporation Plan No. 9023695 o/a Glenora Manor

Danielle Gallo, Legal Counsel
for the Director of the Alberta Human Rights Commission