



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Thomas Caster**

**Applicant**

**-and-**

**Hearthstone Communities Services Ltd.,  
Wilson Blanchard Management Inc. and  
Halton Condominium Corporation No. 377**

**Respondents**

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## INTERIM DECISION

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**Adjudicator:** Mark Hart  
**Date:** January 22, 2013  
**File Number:** 2011-10209-I  
**Citation:** 2013 HRTO 111  
**Indexed as:** **Caster v. Hearthstone Communities Services Ltd.**

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**APPEARANCES**

Thomas Caster, Applicant )  
 ) Lex Arbesman, Counsel  
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Hearthstone Communities Services )  
Ltd., Wilson Blanchard Management ) Firdaus Walele, Counsel  
Inc., and Halton Condominium )  
Corporation No. 377, Respondents )  
 )

[1] This is an Application dated November 2, 2011, and filed under s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), alleging discrimination with respect to housing and contracts because of disability and age.

[2] In general terms, this Application primarily relates to an infestation of bed bugs in the applicant’s condominium unit and his allegations that he was unfairly treated, stigmatized and caused to incur considerable expense as a result of this infestation. This raises the issue of whether a bed bug infestation can be regarded as a “disability” within the meaning of the *Code*. The applicant also has Type 2 diabetes and weeping ulcers on his legs, and alleges that he was denied access to necessary medical treatment and other services because of this disability.

[3] The respondent Halton Condominium Corporation No. 377 is the owner of a condominium complex in Burlington, Ontario known as Hearthstone by the Lake. The respondent Wilson Blanchard Management Inc. provides property management services for this complex. The respondent Hearthstone Communities Services Ltd. owns, manages and controls the Hearthstone Club, which occupies two units in the condominium complex, and includes facilities such as the dining room, health and wellness centre, library, pool and fitness facility used by residents of the complex.

[4] By Case Assessment Direction dated June 20, 2012 (the “CAD”), the Tribunal directed, in response to the respondents’ request, that a summary hearing be held to determine whether the Application should be dismissed on the basis that there is no reasonable prospect that it will succeed.

[5] Rules 19A.1 and 19A.2 of the Tribunal’s Rules of Procedure read as follows:

19A.1 The Tribunal may hold a summary hearing, on its own initiative or at the request of a party, on the question of whether an Application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application or part of the Application will succeed.

19A.2 Rules 16 and 17 do not apply to summary hearings. The Tribunal may give directions about steps the parties must take prior to the summary hearing, including disclosure or witness statements.

[6] Details about the nature of a summary hearing were set out as follows in *Dabic v. Windsor Police Service*, 2010 HRTO 1994 at paras. 8 and 9:

In some cases, the issue at the summary hearing may be whether, assuming all the allegations in the application to be true, it has a reasonable prospect of success. In these cases, the focus will generally be on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a *Code* violation.

In other cases, the focus of the summary hearing may be on whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her *Code* rights were violated. Often, such cases will deal with whether the applicant can show a link between an event and the grounds upon which he or she makes the claim. The issue will be whether there is a reasonable prospect that evidence the applicant has or that is reasonably available to him or her can show a link between the event and the alleged prohibited ground.

[7] The CAD stated that the Tribunal does not have the general power to deal with allegations of unfairness, but can only deal with alleged discrimination or harassment on the grounds set out in the *Code*. To succeed in an Application, an applicant must be able to prove discrimination on the basis of a *Code* ground on a balance of probabilities. To show discrimination, an applicant must prove a link between a respondent's alleged actions and a *Code* ground. The CAD expressed concern as to the applicant's ability to prove a link to the grounds alleged and indicated that a summary hearing would be held to address this issue.

[8] A summary hearing in this matter was held by teleconference on October 10, 2012, and was attended by counsel for all parties. I stated my understanding of the issues raised in the Application and described the nature of the submissions I required from applicant's counsel, and confirmed that he understood. I then afforded applicant's counsel the opportunity to make oral submissions, followed by oral submissions from counsel for all respondents, and an opportunity for applicant's counsel to reply.

### **Can having bed bugs be regarded as a "disability"?**

[9] As indicated above, the main thrust of this Application relates to an infestation of

bed bugs in the applicant's condominium unit and his allegations that he was unfairly treated, stigmatized and caused to incur expense as a result of this infestation. This raises the issue as to whether adverse treatment due to a bed bug infestation can amount to discrimination because of disability, which turns on whether a bed bug infestation can be regarded as a "disability" within the meaning of the Code.

[10] The definition of "disability" in section 10 of the *Code* requires some degree of "physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness" and lists a number of medical conditions that are expressly included.

[11] The most closely analogous situation addressed by this Tribunal is set out in *C.M. v. York Region District School Board*, 2010 HRTO 1494 ("*C.M.*"), which arose from a challenge to a school board's policy of sending home students who have head lice or nits. In the *C.M.* case, the Tribunal found that the presence of head lice was not a disability within the meaning of the *Code*. In making this determination, the Tribunal relied upon the decision of the Supreme Court of Canada in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2000 SCC 27, which held that everyday illnesses or normal ailments are not generally disabilities under human rights legislation. In *C.M.*, the Tribunal stated (at paras. 15 to 16):

. . . lice or nits, like colds, are a normal ailment that does not fall within the ground of disability protected by the *Code*. Lice or nits occur very often among Ontario children and last a short time. They are easily treated and removed and do not cause significant obstacles to participation in society. Like individuals with cold symptoms, to avoid the risk of spreading to others, individuals with lice may be required not to participate in school or work until the symptoms are treated or have resolved, but that does not mean that the ailment leads to stigma or bias in the sense of *Code*-protected disabilities that are barriers to full participation in society.

I do not agree with the applicant that what he characterizes as the Board's overreaction can make lice into a disability within the meaning of the *Code*. The exclusion of young students with lice or nits for a brief period until they are removed, whether scientifically justified or not, is not the type of treatment that the Supreme Court is referring to when it talks about "negative bias" against people with physical disabilities. Lice or nits are

common, short term and easily treated. The applicant's disagreement with the Board's response to head lice and nits does not make the condition a disability that falls within the purposes of the *Code* to prevent stereotyping and prejudice based on personal characteristics.

[12] Applicant's counsel distinguishes the *C.M.* decision on the basis that having bed bugs is not a normal ailment that most people get and is far more of a rarity. He also states that dealing with bed bugs is not a situation that can be addressed easily. In fact, in the circumstances of the case at hand, it took five months and multiple treatments by a pest control company to address the infestation. Accordingly, applicant's counsel submits that, unlike head lice or nits, a bed bug infestation is not so easily treated and removed without significant obstacles. A bed bug infestation can lead to a situation, as it did in the case before me, where a person has to throw out clothing and furniture and so cannot be dealt with relatively quickly. He also submits that, rightly or wrongly, there is a huge social stigma associated with bed bugs, even though there is no causal link between bed bug infestations and a person's health habits or cleanliness.

[13] Applicant's counsel submits that having bed bugs is a disability based on the logic implied in the *C.M.* decision. In this regard, applicant's counsel specifically notes that the Tribunal in the *C.M.* decision did not reject the characterization of head lice or nits as a disability because this is an infestation of a parasitic or biologic nature, and urges me not to reject recognizing a bed bug infestation as a disability on this basis. Applicant's counsel notes that a bed bug infestation can manifest itself through bites, bumps, or rashes on the body. He notes that a bed bug infestation is dealt with in a way that is analogous to infection control procedures, as illustrated by the steps taken by the respondent in this case (e.g. by duct taping the outside of the applicant's unit to prevent the spread of the infestation, by putting a sign on the outside of his unit door, by barring the applicant from accessing the common facilities). While not a perfect fit, applicant's counsel submits that how society treats bed bugs is in the same category as how society treats a biological infection and falls within a medical matrix. Applicant's counsel urges me to regard a bed bug infestation as an infection, where a bed bug can lock onto a person's body or domicile not unlike other types of infections. By analogy, it is

submitted that having bed bugs is something that should be regarded as a basis upon which a person can be discriminated against.

[14] Finally, applicant's counsel submits that we are dealing with a novel issue that has not come up before, and on this basis alone, this issue should be referred for a full hearing.

[15] While I appreciate the able submissions of applicant's counsel, I cannot accept his argument that having bed bugs should be regarded as a "disability" within the meaning of the *Code* in the circumstances of the instant case. The analysis in the *C.M.* decision relies upon factors identified by the Supreme Court of Canada in a case arising under the Quebec *Charter of Human Rights and Freedoms*, in which there is no definition of the term "handicap". In the *C.M.* decision, this Tribunal was able to rely upon these factors to find that having head lice or nits is not a "disability" within the meaning of the *Code*, without needing to address the issue of whether an insect infestation falls within the *Code's* definition of "disability". But this does not mean that the *Code's* definition can be disregarded.

[16] The definition of "disability" in s. 10 of the *Code* requires two things: (1) that there be "any degree of physical disability, infirmity, malformation or disfigurement"; and (2) that this be "caused by bodily injury, birth defect or illness". I acknowledge the evidence before me indicating that a bed bug infestation can manifest itself through bites, bumps, or rashes on the body, which could be regarded as a degree of "disfigurement" caused by "bodily injury". I am also aware that the applicant did experience some not very serious bed bug bites during the course of the infestation. But the Application before me does not allege that the applicant experienced adverse treatment because he was bitten by bed bugs. Rather, the foundation of the applicant's allegation is that he experienced adverse treatment because his condominium unit was infested with bed bugs. That is why the sign was posted on his unit door and why he was barred from accessing the common facilities, among other things.

[17] The material before me indicates that a bed bug infestation can spread by one of two means: migration and hitch-hiking. Migration is when bed bugs spread to an adjacent unit by crawling through hallways, plumbing, electrical lines or other means of access. Hitch-hiking is when bed bugs climb into or on bags, clothing or other belongings and are re-located by a person. A person does not spread bed bugs or “infect” other people simply because she or he has a bed bug bite, bump or rash. Rather, a bed bug infestation can be spread by a perfectly healthy, non-injured and non-disfigured person getting a bed bug on her or his clothes or possessions and carrying the bed bug into another place. As a result, it is not any “injury” or “disfigurement” caused by bed bugs that is the issue, but the potential for live bed bugs to be spread by being carried to a new location. That is the context in which the main issues raised in this Application arise. The respondents adopted certain procedures to address the bed bug infestation in the applicant’s unit. The applicant disagrees with those procedures. But that does not make the bed bug infestation in and of itself a “disability” as protected under the *Code*.

[18] In my view, the fact that an otherwise healthy person (or, as in the applicant’s case, a person with a disability unrelated to the bed bug infestation) may have the potential to spread a bed bug infestation in her or his home by transporting bed bugs on her or his clothes or possessions to another location is not a basis upon which that person can properly be regarded as having a “disability” within the meaning of the *Code*. Applying the plain language of the definition of “disability” in s. 10 of the *Code*, in such circumstances there is no “disability, infirmity, malformation or disfigurement” when such a person is a potential transporter of bed bugs, and the potential for such a person to transport bed bugs is not caused by a “bodily injury, birth defect or illness”. Rather, such a person is merely an unwitting facilitator of the manner in which this particular insect spreads to other locations.

[19] In making this determination, I am not making any ruling on whether or not a person who is infected by a germ or virus or other type of disease or illness has a “disability” within the meaning of the *Code*, even if that person is asymptomatic or



personally unaffected by the infection. That issue is not before me. But it seems to me that a distinction can be drawn between an infection, which resides within a person's internal bodily system, and a person, such as the applicant in this case, who has the potential to spread an insect infestation because the particular insect may migrate on that person's clothing or possessions. I also am not making any ruling in relation to a situation where a person experiences adverse treatment because of bites, rashes or bumps caused by bed bug bites or whether adverse treatment in such circumstances could be regarded as being "because of disability". That issue also is not before me. Rather, I am finding merely that a person, such as the applicant in the instant case, who alleges adverse treatment on the basis of an insect infestation in their home and who may spread this infestation by being a transporter of the insects on their clothes or possessions is not a person with a "disability" within the meaning of the *Code*.

[20] I have considered the submission of applicant's counsel that this is a novel issue that has not yet been determined by the Tribunal, and therefore should be referred to a full hearing on that basis. However, it is my view that I am in as good a position to determine this issue on the basis of the summary hearing, where the applicant has had the opportunity to make oral submissions and point me to any evidence he intends to call to support his position at a full hearing, as would be the adjudicator at a full hearing on the merits. Apart from the oral submissions of counsel and the written material filed with the Tribunal, the applicant has not identified any further expert or other evidence that he would have tendered at any full hearing on the merits in relation to this issue.

### **Other allegations of discrimination because of disability or age**

[21] Apart from the allegation that he experienced adverse treatment because of the bed bug infestation in his condominium unit, the Application raises a number of other allegations of discrimination because of disability and age.

[22] First, there is an allegation that on October 8, 2010, the respondent interfered with the applicant's ability to obtain medical treatment for his leg ulcers, which are caused by his underlying diabetes. There is no question that diabetes is a "disability"

within the meaning of the *Code*. The applicant has a nurse assigned by the local Community Care Access Centre (“CCAC”) who regularly comes to his condominium unit to treat and wrap his ulcers. If he does not receive this treatment in a timely manner, he runs the risk of infection.

[23] A treatment of this nature was scheduled for the afternoon of October 8, 2010. The respondents’ records show that a CCAC nurse arrived at the condominium complex at 3:55 p.m. There is no dispute between the parties that the CCAC nurse did not attend at the applicant’s condominium unit at this time and the applicant did not receive the treatment for his leg ulcers at this time. There also is no dispute that another CCAC nurse returned to the condominium complex at 6:40 p.m. on October 8, 2010, and did attend at the applicant’s unit to provide the treatment. The dispute between the parties rests in the circumstances leading to the first CCAC nurse’s failure to attend at the applicant’s unit.

[24] The applicant’s allegation is that he was told by the first CCAC nurse that she had been informed by Leanne Wallace, the Clubhouse Manager for the Hearthstone Club, about the bed bug infestation in the applicant’s unit, and that Ms. Wallace “had instructed her not to go into [the applicant’s] unit”. In contrast, while the respondents agree that the first CCAC nurse was informed of the bed bug infestation, they state that she was told merely to wear personal protective equipment when entering the applicant’s unit to avoid spreading the infestation. The respondents state that the first CCAC nurse then left the complex to return to her car. The respondents do not employ the CCAC nurse and state that they have no control over, and therefore are not legally responsible for, whatever decision the nurse may have made herself or in consultation with her employer about whether to attend at the applicant’s unit.

[25] It is not typically the role of an adjudicator on a summary hearing to resolve issues of credibility between the parties. Typically, witnesses are not called at a summary hearing, no evidence is given under affirmation, and there is no examination or cross-examination. As summary hearings are typically held by teleconference, there is no ability for the adjudicator to observe any witness who may be providing testimony.

As a result, it is not my proper role to assess or make any finding in relation the conflicting evidence of the parties on this issue.

[26] In this case, however, the applicant's allegation rests entirely upon the applicant's allegation that he was told by the first CCAC nurse that she had been instructed by Ms. Wallace not to attend at the applicant's condominium unit. In order to prove this allegation at any hearing, the applicant would need to call the first CCAC nurse to testify and her evidence would need to be in accord with what is alleged in the Application. As this matter has not yet progressed to the stage where the parties have been required to file witness statements, applicant's counsel indicated that he personally had not yet spoken to the first CCAC nurse to confirm her evidence or obtain a statement.

[27] In these circumstances, it seems to me that, before making any final determination as to whether the applicant has a reasonable prospect of success in relation to this specific issue, it would be appropriate to require the applicant or his counsel to obtain from the first CCAC nurse a statement in her own words as to what evidence she would provide at any hearing regarding her interaction with Ms. Wallace on October 8, 2010, what Ms. Wallace said to her, and why she did not attend at the applicant's unit to provide treatment at that time. The applicant is directed to provide to respondents' counsel and the Tribunal confirmation that he intends to call the first CCAC nurse as a witness at any hearing and the aforementioned witness statement within 21 calendar days of the date of this Decision. If this confirmation and statement is provided, the respondents shall have a further seven calendar days to make any written submissions in response, and the applicant shall have three calendar days to make any written submissions in reply. If the applicant fails to provide the required confirmation and statement within this time period, this issue will be dismissed as abandoned.

[28] The applicant also raises an issue in the Application about the denial of meal service and housecleaning services by the respondents. Residents of the condominium complex have the ability to order meals and have them delivered to their units. Typically, like room service in a hotel, the staff member who is delivering the meal will

knock on the resident's door and bring the meal into the unit. In May 2011, it is alleged by the respondents that there was an incident where a male staff member was delivering a meal to the applicant's unit and was told to open the door and come in to the unit. It is alleged that when the staff member went into the unit, the applicant came toward him "butt naked (without any pants on exposing genital)".

[29] The applicant was called on May 20, 2011, and informed that effective immediately he would no longer receive room delivery because of his inappropriate dress, and that he had to come down and pick up his meals. The incident and the May 20, 2011 discussion with the applicant are recorded in documents filed by the respondents. It appears from the material that, notwithstanding what is alleged to have been told to the applicant on May 20, 2011, the applicant may have continued to have his meals delivered, but from this point they would simply be left outside his door for him to retrieve.

[30] It is further alleged by the respondents that on another occasion recorded in a document filed with the Tribunal, a female housekeeper was in the applicant's unit and the applicant was sitting in a chair in the living room with a blanket on his legs. It is alleged that at one point, the applicant stood up to try to put on some shorts, and the blanket fell down to the floor leaving the applicant's "back side exposed" and visible to the housekeeper who was cleaning in the kitchen. It is alleged that there was at least one other similar issue involving a maintenance staff member who attended at the applicant's unit, although no documentation has been filed by the respondents in relation to this third alleged incident.

[31] There is no dispute that on May 25, 2011, the applicant was sent a letter from the Property Manager stating that it had been reported that he had asked staff to attend his suite for various maintenance issues and, upon their arrival, it had been noted that the applicant was not dressed appropriately. It was requested that the applicant please ensure that he is fully clothed when he requires assistance in his suite, and that failure to do so may result in a report being made to the local police.

[32] With regard to housekeeping services, these can be provided to residents of the condominium complex as part of their regular fees. It appears from the material before me that, for some brief period of time, the applicant chose to arrange for a private housekeeper to clean his suite, rather than using the services provided by the respondents. At some point in June 2011, the applicant made a request to resume using the housekeeping services provided by the respondents. On June 29, 2011, Ms. Wallace responded to this request with a letter stating that Hearthstone was not in a position to provide these services to the applicant, due to several incidents where Hearthstone employees were cleaning his unit or delivering meals in his unit and found the applicant inappropriately dressed or not dressed at all from the waist down.

[33] The material before me indicates that the applicant and his counsel made repeated requests for particulars of the alleged incidents, but these were not provided, at least until material was filed with the Tribunal in response to the Application.

[34] It is alleged that the applicant experienced discrimination because of disability arising out of these circumstances. The connection to disability is that the applicant's diabetes and resulting leg ulcers make it very uncomfortable for him to wear pants. While it is not disputed that the applicant is capable of wearing pants, for example when he leaves his unit to attend appointments or for other reasons, it is submitted that in his own home, the applicant should have the ability to dress in the manner that is most comfortable for him in light of his disability. I do not disagree with this. However, when the applicant is having staff attend at or in his suite when he is there, it does not seem unreasonable to me for there to be an expectation that he be dressed in an appropriate manner. There is nothing in the material before me to indicate that the applicant's disability would prevent him from doing this.

[35] In my view, the actions taken by the respondents relate to the applicant's manner of dress when staff attend at or in his unit. Since the respondent's manner of dress is not a need arising from his disability, as it is acknowledged that he is capable of dressing appropriately, I find that the applicant does not have a reasonable prospect of

success in proving that the respondents' actions in relation to this allegation amount to discrimination because of disability under the *Code*.

[36] The applicant further raises an issue about being referred by the respondents to an organization called COAST (which stands for Crisis Outreach and Support Team). In his Application, the applicant characterizes COAST as an organization that provides crisis support for people who have serious mental health issues. The applicant states that he was contacted by COAST on November 12, 2010 and alleges that he was advised that Ms. Wallace had contacted COAST and told them that the applicant was hysterical and in need of assistance. The applicant alleges that this amounts to discrimination because of perceived mental disability.

[37] In the material filed by the respondents, there is documentation indicating that the suggestion to involve COAST was made by the public health inspector. Previously, at the request of the applicant, the respondents had contacted the public health department about the bed bug infestation. The respondents allege that they were informed that the public health department did not regard a bed bug infestation as a "reportable disease" and so it would not get involved. The respondents' documentation indicates that on October 26, 2010, the respondents' Wellness Coordinator heard from the public health inspector, who provided COAST as a contact that may be able to assist in explaining to the applicant about upcoming inspections and be present when such inspections were conducted.

[38] At the summary hearing, I asked applicant's counsel what evidence the applicant would call at any hearing to respond to the respondents' documentary evidence indicating that the referral to COAST had been made at the suggestion of the public health inspector, rather than because the applicant was regarded as being "hysterical" or as being perceived to have a mental disability. In response, it was stated that the only evidence would be based upon the applicant's own supposition. In my view, this does not provide a sufficient basis to establish that the applicant has a reasonable prospect of success in proving this allegation at a hearing.

[39] Finally, the applicant alleges discrimination because of disability and age generally in relation to how he was treated by the respondents. This is largely a bare allegation on the face of the Application, in which the applicant speculates that he was treated by the respondents in the way he was in relation to the bed bug infestation in his suite “simply because they could, I’m old, I’m sick, I’m disabled and I had bed bugs, [who’s] going to care if I’m made a prisoner in my own home and a pariah in my own community”. In this regard, it is notable that Hearthstone by the Lake is a condominium complex that caters to older persons who want access to medical support and other services to continue to live independently.

[40] In the material filed with the Tribunal, the applicant alleges differential treatment in relation to two other residents whose units were treated for bed bugs. It is not disputed that these other residents did not have a sign placed on their unit doors, and were not barred from using the common areas. However, the material before me indicates that these other two units abutted the applicant’s unit, and bed bugs were found in these units after the infestation in the applicant’s unit. The material filed indicates that the residents in these two units were required to vacate their units for only a 24-hour period to permit spraying to eradicate the bed bugs, and that after this one treatment, no further bed bugs were found. In contrast, the bed bug infestation in the applicant’s unit was serious, requiring eight separate treatments before no further bed bugs were found and the removal and destruction of furniture and clothing that had been infested, and spanning over a period of some five months.

[41] In my view, there is no proper basis in the material before me to support an allegation of differential treatment of the applicant in relation to these other two residents, as the material before me indicates that these were two entirely different circumstances. Further, no connection has been made in the material or oral submissions between any such differential treatment and the applicant’s age or disability.

## ORDER

[42] For all of the foregoing reasons, I hereby make the following order:

- a. I find that the Application should be dismissed in its entirety on the basis that the applicant has no reasonable prospect of success in proving a violation of the *Code* at a hearing, with the possible sole exception of the allegation that on October 8, 2010, Ms. Wallace barred the first CCAC nurse from attending at the applicant's unit to provide treatment for his leg ulcers;
- b. With regard to this one outstanding allegation, the parties are directed to take the following steps:
  - i. within 21 calendar days of the date of this Decision, the applicant or his counsel shall obtain from the first CCAC nurse a statement in her own words as to what evidence she would provide at any hearing regarding her interaction with Ms. Wallace on October 8, 2010, what Ms. Wallace said to her, and why she did not attend at the applicant's unit to provide treatment at that time, and shall provide to respondents' counsel and file with the Tribunal confirmation that he intends to call the first CCAC nurse as a witness at any hearing and the aforementioned witness statement,
  - ii. if this confirmation and statement is provided, the respondents shall have a further seven calendar days to make any written submissions in response, and
  - iii. the applicant shall have three calendar days to make any written submissions in reply;
- c. If the applicant fails to provide the required confirmation and statement within the aforementioned time period, this issue will be dismissed as abandoned and the Application will be dismissed in its entirety.

Dated at Toronto, this 22<sup>nd</sup> day of January, 2013.

*"Signed by"*

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Mark Hart  
Vice-chair