RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Kevin Liu and Judith Zhang

Applicants

-and-

Metropolitan Toronto Condominium Corporation No. 541, Metropolitan Toronto Condominium Corporation No. 566 and Del Property Management Inc.

Respondents

DECISION

Adjudicator: Naomi Overend

Date: May 15, 2015

File Number: 2013-14005-S

Citation: 2015 HRTO 637

Indexed as: **Liu v. Metropolitan Toronto Condominium Corporation No. 541**

APPEARANCES

Kevin Liu and Judith Zhang, Applicants	)	Self-represented
MTCC No. 541, MTCC No. 566 and Del Property Management, Respondents	)	Antoni Casalinuovo, Counsel

INTRODUCTION

[1] The applicants, Kevin Liu and Judith Zhang, filed four earlier Applications with this Tribunal, concerning the age restrictions then in place which prevented their son from accessing the recreational facilities at their condominium. In February 2012, they settled these Applications with the condominium, Metropolitan Toronto Condominium Corporation No. 541 ("MTCC 541"), and property management company, Del Property Management Inc. ("Del"), by way of undated, but executed, Minutes of Settlement (the "settlement").

[2] On March 25, 2013, the applicants brought a Contravention of Settlement Application ("Contravention Application") against MTCC 541 and Del, the two respondents named in the original Applications.

[3] It is the Tribunal's usual practice to require two applicants to file two separate applications, but in this case, the fact that Mr. Liu and Ms. Zhang filed a joint Application went unnoticed, and Mr. Liu was administratively treated as the sole applicant. I asked the applicants about this issue at the outset of the hearing and Mr. Liu said he was prepared to be named as the sole applicant. However, previous decisions in this matter list both applicants, as it was clear that the Application was brought jointly by them, and it is my preference to continue to do so. It is my view that it would be unfair to the applicants to require them to elect which one would be the applicant at a stage in the proceedings when it would be too late for them to rectify the administrative error.

EVIDENCE AND FACTUAL FINDINGS

Background

[4] MTCC 541 is a condominium high-rise building. It jointly owns and operates recreational facilities with another condominium high-rise, Metropolitan Toronto Condominium Corporation No. 566 ("MTCC 566"). These facilities include two swimming pools, a whirlpool and sauna, and exercise, billiard and hobby rooms.

[5] Each of the condominiums is run by separate property management companies. MTCC 541 is run by Del, while MTCC 566 is run by Brookfield Residential Services Ltd. ("Brookfield"). The Del property manager assigned to MTCC 541 is Sophia Suri.

[6] Ms. Suri testified that responsibility for the "operational management" of the shared recreational facilities switches every two years between the two property management companies. She is currently responsible for them, and has been since January 2014, but at the time of the incidents giving rise to this Contravention Application, her counterpart at Brookfield, Dora Rusu, was the property manager responsible for the operational management of the shared facilities.

[7] In addition, two members from each of the Board of Directors for the respective condominiums sit on a Shared Facilities Committee, which is responsible for the oversight and governance of the facilities, as opposed to the day-to-day running of them.

Minutes of Settlement

[8] The term of the settlement relevant to the current Application states as follows:

> 2. The rules with respect to the use of the Recreational Facilities shall be amended to provide the following:
>
> …
>
> c. Children under sixteen (16) years of age shall be permitted in the whirlpool, sauna, exercise room, billiard room and hobby room with parental / adult supervision (subject to general closures); and
>
> d. Those resident adults bringing children into the whirlpool, sauna, exercise room, billiard room or hobby room shall sign a waiver of liability in a form to be provided for the purposes of releasing MTCC 541, MTCC 566 or their property management company(ies), from any liability whatsoever and howsoever arising out of the use of these facilities and the attendance of children in these facilities, to the extent that liability is due to the fault or

> negligence of the resident adult responsible for supervising the child.
>
> …
>
> 6. MTCC 541 agrees to send out a notice to all residents stating that harassment against other residents or their children arising out of the children's use of recreational facilities is prohibited and could amount to a violation of the Ontario Human Rights Code and subject the harassing resident to monetary liability. This notice shall confirm that MTCC 541 has zero tolerance for any such harassment by residents.
>
> 7. The Applicants hereby release the Respondents and MTCC 566 and their respective current and former officers, employees and agents from any and all applications, claims, demands, complaints, or actions of any kind up to the date of this settlement agreement or arising out of or in any way related to the Applications filed with the Human Rights Tribunal of Ontario. The Applicants will not make any application, complaint or claim or bring any action against the Respondents or MTCC 566 and these Minutes of Settlement may be raised as a complete bar to any such applications, claim, complaint or action. …
>
> [*Emphasis added*.]

[9] The applicants testified that the rules were amended in compliance with the Minutes and that the residents of MTCC 541 were notified of the changes by way of a memo. They testified that, in the one-year period following the execution of the Minutes, they periodically used the facilities with their son, who was then between eight and nine years old, without serious incident.

[10] They did not recall receiving the waiver referenced in clause 2(d) of the Minutes, and said that they were never prevented from using the facilities during this period by virtue of not having signed a waiver.

Events of February 17, 2013

[11] After 9 p.m., on February 17, 2013 (approximately one year after the settlement between the parties), Ms. Zhang and her then nine-year-old son went to use the billiard room with two friends of the family (a 16-year-old girl and her father). Shortly after they

entered the room, they were approached by a security guard, Khalid Gulamnabi, who told them that children were not allowed to use the facilities. In a report he subsequently wrote about the incident, he mistakenly identified the adult male in the room as Ms. Zhang's spouse (Kevin Liu). He also appeared to believe that the girl was younger than 16.

[12] Ms. Zhang advised the security guard that the rule preventing children from being in the room had been changed. Although Mr. Gulamnabi and the other security guards were advised of the change to the recreational rules on March 30, 2012 (i.e., 10½ months earlier), and had been required to sign the back of the memo certifying they had reviewed it, he testified that he did not recall the rule change that evening, even after Ms. Zhang advised him of it. He asked for proof of this rule change.

[13] Ms. Zhang went to her apartment to get this proof. Her son returned to the apartment with her, but would not go back down to the billiard room when she located the memo to residents advising them of the change to the recreational rules. She returned to the billiard room and showed the memo to the security guard. She testified that he read it slowly and made notes in his memo pad. While he was doing that, she phoned her husband to say that everyone could come down. However, after she hung up, the guard asked her for her residents' photo ID, which she did not have. She asked him for the name of his supervisor and returned to the apartment.

[14] Mr. Gulamnabi testified that after he read the memo he said "sorry" to Ms. Zhang and advised her that she and her companions could use the room. Indeed, he testified that when he returned to the room later that evening, nothing had been "put back," that "it was all left the way it was," implying that he believed the billiard room had, in fact, been used by what he thought were the applicants and their two children. Mr. Gulamnabi did testify he asked for a copy of the applicant's resident photo ID, but it was not produced for him.

[15] Ms. Zhang said there was no apology and nothing was said to them about being permitted to use the room. I accept Ms. Zhang's version of events over that of the security guard, whose testimony lacks both internal consistency and consistency with the preponderance of probabilities.

[16] Both applicants testified that they had never been asked for this identification when they used the recreational facilities in the past. The property manager for MTCC 541, Ms. Suri, testified that the security guards are supposed to ask see this photo ID, even when they know the residents, so the guard was simply following established protocol. However, even the security guard testified that he only asked for photo ID from Ms. Zhang because he did not know her and he wanted to ensure that she was a resident.

[17] I do not accept the security guard's evidence given that: (a) he had not asked for identification during the initial encounter; and (b) the applicant had clearly gone to a unit in the building and returned to the billiard room with a memo addressed to residents. With respect to the latter point, it seems improbable that the guard would have had any reason to doubt her residency after she returned to her unit and subsequently produced the memo. Moreover, given that the applicant failed to produce her identification (a fact to which the parties agree), it seems improbable that the guard would have permitted her to use the room (which Mr. Gulamnabi testified he did) if he was concerned that she was not a resident and, therefore, not entitled to use the room.

Subsequent Complaints

[18] Ms. Zhang testified that she was particularly upset when she was asked for her photo ID after producing the memo about the rule changes. It was her view that if the guard was really concerned about verifying that she was a resident he should have asked her about it right away, thereby allowing her to get both documents at the same time, rather than requiring her to make a second trip to her unit. Also, in light of the fact that they had not been asked to show their photo ID in the past, this request seemed to

be another barrier preventing them from accessing the facility. The parties are in agreement that she was upset and asked the security guard for the name of his supervisor.

[19] That night, the applicants went to the gatehouse to speak to the security guard's supervisor, but were told that he would be on duty the following morning. The respondents produced a "special occurrence report" from the guard who the applicants spoke to that night (but did not produce the author as a witness). The only things of note in that report were that the applicants seemed to be upset and that they asserted that Mr. Gulamnabi had been "abusive" to them.

[20] Mr. Gulamnabi worked for Paragon Security ("Paragon"). No one from Paragon, other than Mr. Gulamnabi, testified, and it is not clear what happened following the receipt of this verbal complaint. That is, there is no evidence about whether the gatehouse guard's report was passed on to the supervisor or that he did any investigation at the time.

[21] The applicants prepared a letter of complaint, under Ms. Zhang's name, the next day (Monday, which was Family Day), which was addressed to the security guard's supervisor. They delivered the letter to the gatehouse. The letter ended with the following line: "Please report this to Management Office ASAP. We will follow up." No one from Paragon spoke to and/or wrote to them at this time.

[22] Sophia Suri testified that she believed that the guard's supervisor spoke to her on February 19, 2013 (i.e., the Tuesday after Family Day). She testified that she thought she phoned the applicants, but did not leave a message when they did not answer their phone. When she received a letter from them on February 21, 2013 (discussed below) she made no further attempts to phone them.

[23] In any event, the applicants did not hear back from either the supervisor at Paragon or anyone at Del concerning this initial letter to Paragon. They then sent an email on February 19, 2013, to Edward Chan, the lawyer who had represented the respondents when the settlement was negotiated the year before. Unbeknownst to them, Mr. Chan had left the firm and no one seemed to be responsible for monitoring his email. There was no automatic response email saying he had left the firm or otherwise any indication that his email was not received.

[24] On February 21, 2013, the applicants then wrote to the Board of MTCC 541 and to Del, enclosing a slightly modified version of the email they sent to Mr. Chan. The correspondence made it clear that they were of the view that there had been a breach of the settlement. Ms. Suri responded by letter dated February 22, 2013, saying that she had forwarded their letter to Dora Rusu (the property manager for the other condominium) as "[a]ll issues relating to the Shared Facilities are addressed to her."

[25] The applicants wrote a follow-up letter, dated February 25, 2013, to Ms. Suri. It is clear from that letter that they did not understand why their complaint was being transferred to a third party (Ms. Rusu was identified as working for Brookfield Residential Services, which was not a party to the Minutes). They state that they wanted a response from the management office (i.e., Del) or the Board directly with the answers to the following questions, namely:

1. Did the security guard know about the changes to the rules?
2. Was the Board aware of the issue and the applicants' letter to the Board's lawyer?

[26] The applicants sent a follow-up email (forwarding the original email) to Mr. Chan. Again, they received no indication that the respondents' former lawyer was not receiving their correspondence. Neither Ms. Suri, nor Ms. Rusu, in the early correspondence, advised the applicants that Mr. Chan was not their counsel.

[27] The applicants make it explicit in their emails to Mr. Chan and the February 25, 2013 letter to Ms. Suri that they expected a resolution of this issue by March 6, 2013, failing which they would be contacting the Human Rights Tribunal.

[28] Ms. Suri responded to the applicant's February 25, 2013 letter on March 1, 2013. She told them the Board of MTCC 541 had received their letters. She reiterated that Ms. Rusu had responsibility for, and would be investigating, this matter and said she understood that Ms. Rusu had already contacted the applicants "with regard to resolving this matter."

[29] This apparently was the last active involvement Ms. Suri had with the applicants' complaints. She did testify with respect to further action taken by the respondents, but this was from reviewing the file rather than from first-hand knowledge. Ms. Rusu, who was the property manager responsible for the shared recreational facilities at this time, and who would have had first-hand knowledge of the events, did not testify.

[30] Ms. Rusu wrote to the applicants for the first time on March 1, 2013, saying that she had received their February 21, 2013 letter. She made no mention of their February 25, 2013 letter addressed to Ms. Suri and it is not clear whether this letter was passed on to her. With respect to the action she intended to take, she said:

> Your complaint letter will be presented and discussed at the next Recreation Centre Committee meeting. A response will be sent to you after the meeting.

There is no indication in this letter when the Committee would be meeting or acknowledgement of the applicants' March 6, 2013 deadline.

[31] On March 3, 2013, the applicants wrote back to Ms. Suri, saying that they had not received any response from Ms. Rusu (Mr. Liu testified that he received Ms. Rusu's March 1, 2013 letter on March 4, 2013). They also noted that Ms. Suri had not responded to their first question about whether the security guard knew about the

change to the recreation centre rules. The third and final paragraph states, in bold letters, that "**if the issue cannot be resolved before March 6th, 2013, We will have to take further legal steps by contacting Human Rights Tribunal about violation."**

[32] Mr. Liu testified that they did not receive any response to this letter to Ms. Suri. Indeed, by March 16, 2013 – 10 days after the March 6th deadline – the applicants had still not heard from the respondents concerning the Committee meeting (or any other action) and so contacted the Tribunal about filing a Contravention Application. They waited an additional eight days before actually filing the Application by email. Mr. Liu testified that he hand-delivered a copy of the Application to the respondents. Ms. Suri acknowledged in her testimony that she would likely have seen the Application on the morning of March 25, 2013, and would have given it to "one of [her] committee members."

[33] Mr. Liu testified that on April 4, 2013, the applicants received a letter from Ms. Rusu, dated March 26, 2013. It was his belief that the letter was back-dated. In any event, the letter stated that the applicants' concerns were discussed at the "latest Recreation Centre meeting held on March 25, 2013." It also states:

> We truly regret the above mentioned incident between you and Mr. Khalid Gulamnabi. We would like to inform you that we have contacted the Security Company Supervisor. We were advised that Mr. Khalid Gulamnabi has acknowledged that changes in Rules and Regulations took place last year but unfortunately he had forgotten and thus made an error. We understand that he apologized and we are confident that any mistake of this nature will not occur in the future.

[34] As noted above, Ms. Rusu did not testify and Ms. Suri was in no position to expound on where Ms. Rusu or the committee got the information that the security guard had apologized. Moreover, she could not say why it took so long for the Recreation Centre Committee to meet, or why Ms. Rusu did not communicate with the applicants about the delay in setting up a meeting or ask for an extension. Ms. Suri

testified that it can be difficult to set up a meeting of the Committee, although she had no first-hand knowledge of what efforts were made to set up this particular meeting.

[35] The respondents put into evidence two letters of apology, dated April 5, 2013, addressed to Ms. Rusu, one of which was from Mr. Gulamnabi and the other from Paragon's Manager of Client Services. Although Mr. Gulamnabi testified that he prepared his letter, I do not accept this evidence. Its wording and formatting is too similar to that of the Manager's letter for this to be merely coincidence. In any event, in the letter, he apologizes for "his behaviour," which he states will never happen again. The "behaviour" is not specified. More importantly, these letters are not addressed to the applicants, nor were they shared with them at the time.

[36] Instead, in their Response to the Contravention Application, dated April 16, 2013, the respondents take a decidedly less conciliatory approach. The first three paragraphs state:

> 1. On or about February 17, 2013, Mr. Khalid Gulamnabi ("Gulamnabi"), a Security Guard with Paragon Protection Ltd. o/a Paragon Security ("Paragon"), attended the Billiard Room as a result of complaints of rowdy behaviour.
>
> 2. During said incident, it was advised to the Applicant that children should not be playing unless they are strictly supervised by an adult, pursuant to the Rules of the shared facility, which is jointly owned and operated by Metropolitan Toronto Condominium Corporation No. 541 ("MTCC 541") and Metropolitan Toronto Condominium Corporation No. 566 ("MTCC 566"). Upon being advised of same, the spouse of the Applicant, who is the mother of the children at issue, advised that she was supervising them and proceeded to speak to Gulamnabi in a rude and abusive manner.
>
> 3. At no point did Gulamnabi force the Applicant and/or their children to leave the shared facility, despite their behaviour.

[37] The Response also states at paragraph 8 that the shared facility committee decided on March 25, 2013 to contact the security guard's supervisor, and direct him to "perform disciplinary action on Gulamnabi." It also stated, inaccurately, that the property

manager communicated this to the applicants in the March 26, 2013 letter. I would note that not only was this not communicated to the applicants, but Mr. Gulamnabi testified at the hearing that he received no disciplinary action.

[38] On May 5, 2013, the applicant Liu sent detailed comments to counsel for the respondents refuting these and other statements in the Response. Nothing further was communicated to him at the time acknowledging the errors.

[39] For reasons that are not entirely clear, the security guard sent an email on June 17, 2013 to the Client Services Manager at Paragon setting out his version of what happened on February 17, 2013. There are no earlier notes from Mr. Gulamnabi, although he testified that he took the content of his notes and reproduced it in this email. Two days later, on June 19, 2013, Paragon sent out a memo to all security guards reminding them of the changes to the Rules and, again, asking the guards to sign the back of the memo. The applicants were not made aware that this action was being taken at the time.

[40] On July 18, 2013, the respondents' counsel wrote to Mr. Liu to say that his client had reviewed "its records pertaining to your Unit and you have failed and/or refused to execute a waiver of liability for the purpose of releasing MTCC 541, MTCC 566 and their property management companies arising out of the use of the Shared Facilities and the attendance of children in these facilities." After reproducing clause 2(d) of the Minutes, the letter states that the respondents take the view that Mr. Liu was "in breach" of the Minutes and that if he fails "to execute the waiver forthwith, we will take the position that you are in breach of the Minutes of Settlement and have the HRTO address this matter in the hearing of your Application."

[41] The applicant responded to this letter by way of an email dated July 25, 2013. He asserts (as he did at the hearing) that he did not receive a copy of the waiver with the original package, and that he had spoken to other families who also denied receiving a copy of the waiver. He then asked the respondents to disclose, amongst

other information, how many units in his building had signed the waiver before February 17, 2013.

[42] On August 5, 2013, Mr. Liu signed the waiver, which he delivered to the property manager. Counsel for the respondent wrote a letter to Mr. Liu on August 6, 2013, in which he stated "We thank you for your compliance with said provision and as of now the Minutes of Settlement from your previous Application *have now been finalized and are in effect.*" [Emphasis added.] Counsel also said that he had confirmed with his clients that the waiver was sent to all unit holders on February 29, 2012. Counsel did not respond to the request for the information on the number of waivers signed by unit holders requested by Mr. Liu.

[43] Mr. Liu reiterated his request in an email to counsel on August 7, 2013. Counsel responded that date as follows: "With respect to your requests for information regarding other unit owners, it does not form part of this application as it is you, and only you, who is alleging a breach of the minutes of settlement with MTCC 541 and MTCC 566." He also states that the *Condominium Act* precludes him from disclosing information about other unit owners.

DECISION AND ANALYSIS

Proper Respondents

[44] Early on in the proceedings, the respondents filed a Request for an Order During Proceedings, in which they asked to add MTCC 566 and Paragon as respondents to this Application. This request had a somewhat protracted procedural history which it is not necessary to reproduce at this time. Suffice to say, by the time this hearing on the merits took place, the respondents were no longer seeking to add Paragon as a respondent.

[45] Although MTCC 566 jointly operates the recreational facilities at issue with MTCC 541, it was not named as a respondent to the original Applications. Given that it was jointly responsible for the alleged discriminatory rules governing these facilities, it was added as an "Interested Party" to the Minutes of Settlement. The applicants did not name it as a respondent to the current Contravention Application, but when asked for their position on the request to add MTCC 566, said they did not oppose it. Likewise, MTCC 566, which is represented by the same counsel as the other respondents, does not oppose being added.

[46] Given that members of the Board of Directors of MTCC 566 sit on the Recreation Centre Committee for the shared facilities at issue, and that MTCC 566 was a signatory to the Minutes of Settlement, it is appropriate to add this entity as an organizational respondent to the Contravention Application.

Was there a Contravention of the Settlement?

[47] The clause in contention requires the Rules for the shared recreation facilities to be amended to permit children under 16 to use the exercise, billiard and hobby rooms with parental / adult supervision. The plain language of the Minutes reflects the parties' intention that not only would these rules be changed, but going forward, they would be upheld. For example, clause 5 of the Minutes requires the respective condominiums to make changes to the signage in the joint recreation facilities to reflect the change in rules. Similarly, in clause 6, MTCC 541 was required to send out a notice "stating that harassment against other residents or their children arising out of the children's use of recreational facilities is prohibited" and that MTCC 541 has "zero tolerance for any such harassment by residents."

[48] In the course of his duties, the security guard was acting as agent for the respondents. When he advised the applicant Zhang that she was not allowed to play pool in the billiard room with her son and her guest (whom he incorrectly assumed to be

her under-aged daughter), he was stating, on behalf of the respondents, that the new rules would not be upheld. This constitutes a breach of the Minutes of Settlement.

[49] The respondents have argued that if it is a breach, it is *de minimus* as it was merely a fleeting encounter that lasted, at most, a few minutes. However, as the evidence establishes, the respondents' reaction to the applicants' distress managed to prolong the impact of this incident. In saying this, I take into account the following facts:

- Contrary to what the security guard said, I have found that he did not apologize for his error and advise Ms. Zhang that she, her son and her guests could use the billiard room.

- Instead, the security guard inflamed the situation by asking for Ms. Zhang's resident ID, even though it must have been clear to him at this point that she was a resident of one of the two buildings. This was not surprisingly perceived by Ms. Zhang as yet another tactic to prevent her from using the facilities that evening.

- The applicants' concerted attempts to have the respondents respond to this incident went largely unacknowledged until after they had contacted and filed this Application with the Tribunal.

- Those in receipt of the early letters from the applicants failed to take seriously the applicants' request that the matter be resolved by March 6, 2013. Instead they moved at their own pace (which was not explained at the hearing by anyone actually involved in the process). They did not notify the applicants when they intended to meet or ask for an extension.

- By the respondents' inaction and failure to communicate, the applicants were left with the impression that the respondents were not taking their concerns seriously or even regarded the incident of February 17, 2013 as a breach of the settlement.

- When the Committee finally did meet on March 25, 2013, there appeared to have been no investigation, other than to have possibly asked Mr. Gulamnabi's supervisor (who was not present) what had happened. Neither the applicants nor the security guard appeared to have been asked prior to the meeting for their position concerning what happened the evening of February 17, 2013 or for clarification.

- This failure to investigate is manifest in the respondents' materials: the Response sets out an untrue version of the facts; Mr. Gulamnabi's

witness statement for this hearing states that Mr. Liu was the adult male in the room with Ms. Zhang; and Ms. Suri's witness statement says that Ms. Zhang and her son were accompanied by two of his (under-aged) friends on the evening in question.

- In the absence of any meaningful inquiry, the respondents appear to have taken at face value the security guard's assertion that he apologized and allowed the applicants to remain.

- The March 26, 2013 letter of response following the Committee Meeting on March 25, 2013 (the day the applicants delivered this Application to the representative for Del and MTCC 541) contains little concrete response other than to say that the respondents "truly regret the incident" and that the guard had made an "error" for which they understood (mistakenly) he had apologized.

- Letters of apology from the guard and the Client Service Manager at Paragon were directed to Ms. Rusu, not the applicants.

- They were forwarded later that month to the applicants as an attachment to the Response, but the position taken by the respondents on the facts in their Schedule A to this Response suggest that an apology was unnecessary. Specifically, the Response does not acknowledge that the guard challenged Ms. Zhang's right to be in the room with persons under 16. Instead, the respondents suggested that it was the applicants who were in the wrong – that it was their "rowdy" behaviour that prompted the guard to tell them that they had to "more closely supervise" their children when using the Recreation Centre. It further blamed Ms. Zhang for her "rude and abusive behaviour." In light of this position, the security guard's apology for his unspecified "behaviour" is rendered meaningless.

- Moreover, in defending the Application, the respondents subsequently suggested that the applicants were in breach of the settlement by failing to sign the waiver, which the applicants state they never received. Even after they received this waiver, counsel for the respondents took the position that the settlement was just then in effect. This position is manifestly wrong on the face of the Minutes of Settlement.

- Each of these actions made the applicants feel that the respondents believed them to be in the wrong, and prompted them to write lengthy letters in response.

[50] The Tribunal's jurisprudence has suggested that a respondent has a duty to

investigate where allegations of discrimination and/or reprisals have been made by potential applicants. I agree with the jurisprudence that states that a failure to investigate *per se* does not constitute a free-standing breach of the *Human Rights Code* (the "*Code*"), but that a failure to investigate can "cause or exacerbate the harm of discrimination" where the underlying allegations of discrimination or reprisal are substantiated. See *Scaduto v. Insurance Research Bureau*, 2014 HRTO 250 at para. 82. In a similar vein, the failure to appropriately investigate a breach of settlement can also exacerbate that harm caused by the breach, where it is substantiated.

[51] Had the initial behaviour here – the challenge by the security guard – been resolved immediately, it would have been an unpleasant, but fleeting reminder of the events that led to the initial Applications. I accept Ms. Zhang's testimony that had the guard acknowledged his error rather than asking for her photo ID, she would not have reported the behaviour to his supervisor. I also accept the applicants' testimony that if the respondents had attempted to resolve this issue in a timely manner, they would not have filed this Application. In the absence of any acknowledgement by the respondents that the guard's challenge was wrong, it was not unreasonable for them to feel that the respondents were reneging on the settlement.

[52] Applicants settle human rights applications in good faith and they expect the terms of settlement to be followed. When they are not, the harm that results may be much more than simply a term of settlement not being implemented. The failure to implement a settlement undermines the good faith that is placed by applicants in the settlement process and may result in them feeling re-victimized again.

[53] In this case, the respondents exacerbated the harm caused to the applicants by failing to take their complaint seriously, by failing to respond to their inquiries concerning the breach of the settlement in a timely manner, by suggesting (inaccurately) that it was the applicant's own behaviour that was the problem, and by suggesting that the settlement was not effective until the waiver was signed. The net effect of all of these actions was more harmful to the applicants because they were directed at them

personally, rather than simply being about a general policy directed at the membership as a whole.

REMEDY

[54] The applicants testified that in the intervening two years since the events giving rise to this Application, their son has chosen not to use the Recreation Centre facilities. He did ask about taking two friends to use the facilities this year (for the first time), but that that social event did not proceed. They also testified that, over the years, he has become wary about interacting with the other residents of the building – in particular the seniors – because of the cumulative effects of the interactions that led to the initial Applications. Rather than ameliorating the impact of these earlier encounters, the respondents' conduct with respect to the breach has served to aggravate it.

[55] It was also evident to me that the respondents' failure to investigate and resolve this issue, coupled with their misguided attempts to blame the applicants for their difficulties, has caused the applicants a great deal of anxiety. Mr. Liu, in particular, felt the need to defend their position with increasingly lengthy, detailed and carefully prepared submissions in response to the written submissions and correspondence from the respondents and their counsel.

[56] The applicants have submitted that the award in this case should penalize the respondents for their conduct. The case law from this Tribunal has repeatedly refused to make such orders on the basis that the *Code* is remedial, rather than punitive, legislation. This caselaw applies to contravention of settlement applications. Section 45.9(8) of the *Code* states the Tribunal may make "any order that it considers appropriate to remedy the contravention."

[57] Having said that, a compensatory award for the emotional impact of the respondents' actions (or lack thereof) is appropriate in this case. Counsel for the respondents provided a series of cases for which the applicants were awarded from

zero to $1,000 in damages for the emotional component of the contravention of settlement. Many of these breaches in these cases were described as *de minimus*, a characterization which I find is not applicable in this case. In light of the emotional toll on the applicants and their ability to enjoy the recreational facilities available to the residents of their building as a family, I award them $5,000.00 in general damages, inclusive of pre-judgment interest.

ORDER

[58] The Tribunal orders as follows:

a. The respondents shall jointly and severally pay the applicants $5,000.00 as monetary compensation for the damage to their dignity, feelings and self-respect within 30 days of the date of this Decision.

b. Post-judgment interest shall be at the rate of 2.0% if the above amount is not paid within 30 days of the date of the Decision.

Dated at Toronto, this 15th day of May, 2015.

"Signed by"

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Naomi Overend
Vice-chair